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STATE OF MONTANA

DEPARTMENT OF AGRICULTURE

NOXIOUS WEED MANAGEMENT ADVISORY COUNCIL

FINAL REPORT

December 6, 1976

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STATE OF MONTANA
DEPARTMENT OF AGRICULTURE
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COMMISSIONER
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TELEPHONE:
AREA CODE 406
449-3144

THOMAS L. JUDGE
GOVERNOR

January 19, 1977

The Honorable Thomas L. Judge
Governor of Montana
State Capitol
Helena, Montana 59601

Dear Governor Judge:

The Department of Agriculture's Noxious Weed Management Advisory Council has officially completed its responsibilities according to the Creation Order deadline of June 30, 1976. Enclosed is the Advisory Council's Final Report, recommendations, minutes of meetings, and the final draft of the "Montana Noxious Plant Management Act."

I believe the Council has done a commendable job and has achieved its assignment as set forth in the Creation Order. However, continued effort in the area of noxious plant management is necessary. This responsibility resides with the 56 weed districts, the Department of Agriculture, and the Cooperative Extension Service. This department is continuing to consult with various state departments and citizen groups in order to develop an acceptable and workable noxious plant management program.

My comments on the Council's recommendations are attached to this letter. While I generally endorse their recommendations, I have made exceptions to some of them.

If you or your staff have any questions concerning the Council's report or recommendations or my recommendations, please feel free to contact the Council members or myself.

Sincerely,

George

George Lackman
Commissioner

Enclosures

Comments on the Council

Recommendations

Recommendation No. 1.

I endorse this recommendation of the Noxious Weed Management Advisory Council to present the proposed "Montana Noxious Plant Management Act" to the 1977 legislature.

In view of the proposed changes for local government codes by the State Commission on Local Government, (which includes changes in the Montana Weed Law similar to the Advisory Council's proposed changes), I recommend that the Advisory Council's draft be tabled upon presentation to the legislature until the 1977 legislature decides to accept or reject the State Commission on Local Government's proposal. In the event that the Commission's proposal is rejected, then I recommend that the Advisory Council's proposal be submitted for legislative consideration.

Recommendation No. 2 (a).

I endorse recommendation 2 (a), the employment of a Weed Specialist in the Department. The noxious plant (weed) problem is very serious because of its real and potential affects on agricultural production. The duties and responsibilities set forth in Appendix IX of the council report should be a priority for the department and the state. If the state can provide the technical and financial (federal funds used to control weeds on federal lands by counties - granted through the department - see Recommendation No. 8) assistance for counties it may be possible to decrease the number of acres already infested or even to just prevent continued weed infestations onto new lands.

Recommendation No. 2 (b).

I endorse the concept of this recommendation, but hesitate to recommend the hiring of seasonal field aides. Therefore, I recommend that $5,000 per fiscal year be requested from the legislature to be placed into contracted services. These monies could be matched with county monies or used to contract individuals for limited periods of time to carry out the noxious plant mapping and investigation functions contained within the council's recommendation.

Recommendation No. 3.

While I endorse the concept of Recommendation No. 3, with existing state funding limitations and the possibility of obtaining federal funds (Recommendation No. 8) or state funds by budget amendment for critical noxious plant infestations, I cannot approve of the implementation of this recommendation.

Recommendation No. 4.

My position on Recommendation No. 4 is identical to my position of Recommendation No. 3.

Recommendation No. 5.

Once again I endorse the concept of Recommendation No 5, use of false-color infrared photogrammetry services. This department has experienced limited success for identification of Leafy Spurge and Canadian thistle infestations in rural areas using this method. Identification and location of noxious plant populations is the key for developing, implementing and managing noxious plants within the respective counties. I do endorse the idea of this department submitting a grant proposal to EPA for further development of this methodology to identify and locate noxious plant infestations. This proposal is being prepard presently and will be submitted to OBPP for approval.

Recommendation No. 6.

The department has fulfilled this council recommendation.

Recommendation No. 7.

The use of biological agents to control noxious plants has many potentials in our state. The university system through the Experimental Research Station is currently undertaking such efforts with limited funding. While I believe it would be valuable to the state to fund this program at a higher level, current state budget limitations, limit this possibility. I would endorse the idea that the state of Montana, through the experiment station seek federal funding (EPA most likely) to increase its capabilities for advancement of biological noxious plant control.

Recommendation No. 8.

I endorse Recommendation No. 8 in total. Please refer to Enclosure No. 1, a proposed bill to allow the department to seek federal funds from Congress in cooperation with counties and federal agencies. (Enclosure No. 2 - Public Law 96-583 is enclosed for your review). Without some form of legislation it is doubtful whether the Department of Agriculture could seek and obtain these funds. I would like to emphasize that the department would serve as a pass through agency and would dispense the funds to counties upon proper application and justification. No funds would be used to support additional positions or operations except for utilization of up to 3 percent of federal funds for administrative purposes.

Federal lands, normally at the head of watersheds, infested with noxious plants, provides a continuing source for new weed infestation on agricultural lands down stream. Some producers in the state have expended monies for weed control on their lands around rivers or streams to only experience

reinvasion from up stream sources, such as federal lands. The range lands in western Montana continue to be dramatically affected by weeds, some of which originates on federal lands. My support of this recommendation is based upon these and related weed problems on and from federal lands. It is my understanding that two western states already receive these federal monies to control noxious plants. Montana needs to participate in this program.

Recommendation No. 9.

I can not endorse Recommendation No. 9, even though I understand the Council's reasoning for supporting Noxious Plant Management Boards. I believe that the State Commission's position on leaving the establishment of administrative or advisory boards to the governing body of a county is proper because the political body of counties need the option of managing programs to meet their own local needs. I recommend that the states' position on a noxious plant board be identical to the State Commission's position.

In summation, I agree that information from the Council and other sources reveals that noxious plants are a continuing problem in Montana. The most reliable information indicates that the number of acres infested with noxious plants may be increasing by 10 percent per year in Montana. These plants are directly competing or have the potential of competing with crop production in agricultural and range lands. Because of these adverse affects on agriculture the present weed law is inadequate to resolve or limit this continued infestation of agricultural lands. The Council's and State Commission on Local Government Acts establish a realistic management program that provides for improved citizen participation while addressing the economic and environment limitations of government involvement. I endorse the concept that weed management is a local government function and should not be a function of state government. While this position limits state government from becoming directly involved in conducting noxious plant control programs, except for those agencies managing state lands, it should not limit providing technical support and consultant services to counties by this Department or the Extension Service. These two agencies have primary responsibility to provide services not only to weed districts but to producers. Currently these programs are coordinated to eliminate duplication of services and in fact are only providing essential services with existing agency personnel and funding limitations. Current requests of producers and districts can not be met by these agencies. The increasing economic and environment concerns of citizens will certainly result in increased requests for technical assistance in the future. The employment of a full time weed specialist will help in providing the requested assistance.

It is my belief that for this department to properly perform these increased functions the Bill proposed (Enclosure No. 1) should be considered by legislature and you to establish the state's priority on this subject. If the program is considered necessary then the proposed bill should be enacted, directing the department to perform the functions set forth in the bill. I would certainly welcome a discussion of my recommendations and this bill with you or your staff if you so desire.

COUNCIL MEMBERS

Don Baldridge, Superintendent
Southern Montana Agricultural
Research Center
Huntley, Mt 59037

Dale V. Benge, President
Montana Weed Control Assn.
Volberg, Mt 59351

Tom Burns
Montana Stockgrowers Assn.
Chinook, Mt 59523

Larry Erpelding
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Montana Cattleman's Assn.
Alzada, Mt 59311

John P. Weigand
Game Research Biologist
Research Division
Department of Fish and Game
Bozeman, Mt 59715

*Les Pederson was originally appointed but vacated his membership when he accepted a position with the Department of Health and Environmental Sciences

Staff - Department of Agriculture

Gary L. Gingery, Administrator; Pesticide Division

David W. Armstrong, III, Botanist; Pesticide Division

O. Roy Bjornson, Administrator; Horticulture Division

Contributors

Gerald Bohne, Burlington Northern Railroad, Billings, Mt

Charles Chambers, Milwaukee Railroad

Vonley Cox, Cascade County Weed Board

Carol Ferguson, State Commission on Local Government

Max Green, USDA-Forest Service

Nancy Hayne, Intern State Commission on Local Government

Doug Johnson, Cascade County Consolidated Pest Management Program

Carol Larson, Silver Bow County Weed Board

Arlene Loble, City of Helena

George McCafferty, Cascade County Weed Board

Steve McGrath, Supervisor, Silver Bow County Weed District

Dan Meisner, League of Cities and Towns

Lyle Ralston, Bureau of Land Management

Noel Rosetta, Audobon Society, E.I.C., Montana Association of Nurserymen, Sierra Club

Al Thelen, City of Helena

Jo Ann Wunderlich, Secretary, Montana Department of Agriculture

REPORT

of the

Noxious Weed Management Advisory Council

The Noxious Weed Management Advisory Council, established in June of 1975, was instructed "to review existing government and private weed control programs, inventory weeds and acreage infested in Montana, evaluate the economic and environmental effects of weeds on agriculture and livestock, develop recommendations for improving the management of weeds in the state, to develop appropriate legislation, if necessary, to be presented to the Governor and the 1977 Legislature." (Appendix I) The Council's six broad objectives were to:

1. Review current weed programs, especially county weed districts.
2. Inventory weed infestations.
3. Evaluate the economics of weeds on agricultural lands and livestock.
4. Evaluate the environmental effects of weeds on agricultural lands and livestock, and the environmental effects of controlling the weeds.
5. Develop recommendations for improving weed management programs.
6. Develop legislation, if necessary.

History

The Noxious Weed Management Council was created by the Governor at the request of the Agricultural Ad Hoc Committee and the Montana Department of Agriculture. Several problem areas in noxious weed management in Montana were the motivating forces behind the Council's creation. Some of the problems are described:

1. There are an estimated one million acres of noxious weeds in Montana increasing in acreage at a rate of ten percent annually.

2. The number of acres of noxious weed infestations is increasing despite more than thirty years of control work performed by county governments.

3. Increasing noxious weed infestations may lead to a reduced ability of the Montana agricultural system to produce needed food and giver.

4. Increased use of and restrictions on pesticides used to control noxious weeds.

5. The current Montana Weed Law is inadequate, vague, and unenforceable.

With these reasons providing impetus, the first meeting of the Noxious Weed Management Advisory Council met September 10, 1975. (Appendix V (a)). This first meeting was organization in nature, providing a chance for the members to become acquainted with each other. Materials on noxious weed management were distributed to the Council. Dale Benge and Don Baldridge were elected Chairman and Vice Chairman respectively. Short presentations were given on noxious weeds and their management by representatives of the Department of Agriculture and the members of the Council.

During the February meeting, (Appendix V (b)) the Council reviewed a survey of Montana's Weed Districts and the accompanying report prepared by David W. Armstrong, III, Botanist for the department. The department also presented proposed recommendations for changes in the current weed law with an explanation of the necessity for the alterations. Prior to the

April meeting of the Council, the department undertook a major rewrite of the Montana Weed Law. The result of this effort is the proposed "Noxious Plant Management Act." The proposed act became the focal point of the Council's attention during the April and June meetings, (Appendix V (c) and (d). The major developments addressed in the proposed act include:

1. Management plans developed by county government.

2. A definition of "noxious plant."

3. Opportunity for the individual landowner to enter into an agreement with the county for the management of noxious plants.

4. The provision for a penalty clause.

5. The Weed Board would function as an Administrative Board.

6. Management plans developed by the counties must be submitted to various state agencies for review and comment.

7. Delineation of citizen responsibilities, supervisor responsibilities, county and state government responsibilities.

As a result of their investigation into the area of noxious plant management, the Noxious Weed Management Advisory Council makes the following recommendations:

Recommendation No. 1.

The current Montana Weed Act be amended as set forth in the Council's draft of the "Noxious Plant Management Act" and be presented to the 45th Legislature for adoption.

Recommendation No. 2.

(a) The 45th Legislature appropriate monies to the Montana Department of Agriculture for the purpose of employing a "Weed Specialist." (Refer to the duties of the Weed Specialist in the Final Report - Appendix VIII).

(b) The 45th Legislature appropriate monies to the Montana Department of Agriculture for the purpose of hiring five (5) temporary summer field aides to assist the Weed Specialist in locating and mapping noxious plant infestations in the state during the summers of 1977 and 1978. (Refer to the duties of the Summer Field Aides - Appendix IX)

Recommendation No. 3.

The 45th Legislature appropriate funds to the Montana Department of Agriculture to assist one or more counties in managing massive infestations of any designated noxious plant. State funds would only be provided upon application ($25,000).

Recommendation No. 4.

The 45th Legislature appropriate funds to the Montana Department of Agriculture to administer to a county for management of any newly introduced noxious plant ($10,000).

Recommendation No. 5.

The 45th Legislature appropriate funds to purchase available false-color infrared photogrametry services for mapping Montana. Infrared photogrametry represents the only photographic tool that is useful in the aerial detection of noxious plants.

Recommendation No. 6.

The Montana Department of Agriculture present the final draft of the "Noxious Plant Management Act" to the seven (7) area weed councils and to the County Commissioners or their representatives.

Recommendation No. 7.

The 45th Legislature appropriate sufficient funds to the Montana University System to be used for the investigation of appropriate biological agents which might be used for controlling those plants

named in the final proposed draft of the "Noxious Plant Management Act" ($25,000).

Recommendation No. 8.

The Department of Agriculture seek funding for local districts under Public Law 96-583, Carlson-Foley Act, for management of noxious plants on federal lands in Montana.

Recommendation No. 9.

The "Noxious Plants" service chapter to the Local Government Codes drafted by the State Commission on Local Government be presented to the 45 Legislature. The Council recommends the State Commission on Local Government replace the Noxious Plant Management Board within the proposed "Noxious Plants" service chapter.

Recommendation No. 10.

The Montana agricultural commodity organizations study the proposed "Noxious Plant Management Act" and if appropriate, endorse and support the proposal during the 45th legislative session.

Voting Record by Council Members on Recommendations

Council Members	1	2a	2b	3	4	5	6	7	8	9	10
Don Baldridge	x	x	x	x	x	x	x	x	x	x	x
Dale Benge	x	O*	O*	x	x	x	x	x	x	x	x
Tom Burns	x	x	x	x	x	x	x	x	x	x	x
Larry Erpelding	x	x	x	x	x	x	x	x	x	x	x
Don Gruel	x	x	x	O	x	O	x	x	x	x	x
Jack Iman	x	x	O*	x	x	x	x	x	x	x	x
Mike Jackson	x	x	x	x	x	x	x	x	x	x	x
Gilman Mirehouse	x	x	x	x	x	M*	x	x	x	x	x
Clifford Stoltz	x	x	x	x	x	x	x	x	x	x	x
Ole Ueland	x	x	x	x	x	x	x	x	x	x	x
Gene Walker	A	A	A	A	A	A	A	A	A	A	A
John Weigand	O*	M*	M*	M*	M*	M*	M*	M*	M*	M*	M*
Total "x"	10	9	8	9	10	8	10	10	10	10	10
Total "O"	1	1	2	1	0	1	0	0	0	0	0
Total "A"	1	1	1	1	1	1	1	1	1	1	1
Total "M"	0	1	1	1	1	2	1	1	1	1	1

Vote: For "x" - Against "O" - Abstain "A" - Modify "M"

An asterisk * indicates member commented on the recommendation.

NOTE: Refer to recommendations page

MINORITY REPORT

John P. Weigand

Montana Department of Fish and Game

Recommendation No. 1.

The final draft of "The Montana Noxious Plant Management Act" contains some good provisions; they are improvements over those of similar, previous legislation. For the most part, however, the proposal fails to recognize or incorporate accepted concepts and principles of animal and plant ecology or to adequately provide for input by those with the expertise requisite to prevent degradation of Montana's environments. The thrust of the proposed Act continues the anti-wildlife theme of the 1969 Montana Weed Law. Unless modifications were made to lawfully and adequately protect and perpetuate wildlife habitat, our support of this proposal would violate the prescribed legal obligations of the Montana Fish and Game Commission to the people of Montana. Some of these modifications were offered repeatedly to, and were rejected repeatedly by, the Noxious Weed Management Advisory Council during its meetings. It is unfortunate that the concern expressed for wildlife by many Council members is not reflected in the proposed Act.

Recommendation No. 2(a)

Before our Department can accept or reject this proposal, the qualifications of the weed specialist need to be stated. A minimum of a bachelor of science degree with a major in botany or plant ecology from an accredited college or university should be required; a master of science degree in one of these fields would be preferred. This proposal may be in conflict with the current trend to reduce or eliminate federal assistance in state government programs.

Recommendation No. 2 (b).

Inasmuch as this proposal hinges on acceptance of (a), our Department does not object to employing these aides except as it might conflict with economizing state expenditures and reducing federal subsidization.

Recommendation No. 3.

Before our Department can support this proposal, "massive" must be defined to our satisfaction and the qualifications of persons designating which plants are to be "noxious" must be substantially upgraded.

Recommendation No. 4.

No official proposal was received for review.

Recommendation No. 5.

No official proposal was received for review. Without detailed information of this technique, its validity or limitations, its possible current use by other state agencies or federal agencies in Montana, personnel qualifications required for equipment use or accurate interpretation of results, plant species which can be accurately identified and other relevant information, it does seem prudent to give blanket approval for expenditures of state monies on this proposal.

Recommendation No. 6.

Our Department can justify support of this proposal provided the recipients also and simultaneously receive information revealing: (1) the limitations and hazards connected with noxious plant management programs, especially those utilizing herbicide applications, and (2) the potential adverse affects of the Act to wildlife and its environment.

Recommendation No. 7.

It would be appropriate to first put noxious plant infestations into their proper ecological perspective and to document the actual adverse affects (economic, environmental and human health) imposed by noxious plant

occurrence. Until this is accomplished, it does not seem prudent to request legislative appropriations for investigating "control" methods.

Recommendation No. 8.

This proposal would be acceptable to our Department if: (1) "management" was specifically defined to include correct and proper grazing and timber-harvesting programs; (2) all values derived from federal lands, including wildlife, be given equal consideration in developing and implementing noxious plant management programs; and (3) the proposal will not make state government more dependent on federal subsidies.

Recommendation No. 9.

This proposal is acceptable to our Department if all the changes previously recommended by us are incorporated into this particular chapter.

Recommendation No. 10.

Our Department can justify support of this proposal provided the recipients also and simultaneously receive information revealing: (1) the limitations and hazards connected with noxious plant management programs, especially those utilizing herbicide applications, and (2) the potential adverse affects of the Act to wildlife and its environment.

Filed: July 7, 1975
FRANK MURRAY
Secretary of State
By [signature]

STATE OF MONTANA

JUL 7 1975
SECRETARY OF STATE

CREATION, RECORD, AND GOVERNOR'S APPROVAL OF THE Noxious Weed Management ADVISORY COUNCIL this 25th of June, 1975.

The purpose of the council shall be to review existing government and private weed control programs, inventory weeds and acreages infested in Montana, evaluate the economic and environmental effects of weeds on agriculture and livestock, to develop recommendations for improving the management of weeds in the state, to develop appropriate legislation, if necessary, to be presented to the Governor and the 1977 Legislature.

The council shall be composed of twelve members who are interested in weed management and agriculture. The names and addresses of council members serving at the pleasure of the Governor are:

Name	Address
Tom Burns Montana Stockgrowers Association	Chinook, Montana 59523
Gene Walker Montana Cattleman's Association	Alzada, Montana 59311
Jack Iman Montana State Grange	Victor, Montana 59875
Larry Erphelding Montana Grain Growers	Forsyth, Montana 59327
Dale Benge Montana Weed Control Association	Coalwood, Montana 59321
Ole Ueland Montana Department of Natural Resources and Conservation	Conservation District Division 32 South Ewing Helena, Montana 59601
Mike Jackson Montana Cooperative Extension Service	Montana State University Bozeman, Montana 59715
Les Pederson, Chief Montana Department of State Lands	1615 Eleventh Avenue Helena, Montana 59601

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Don Baldridge
Montana Agricultural Research Center

Southern Montana
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John P. Wiggand
Montana Department of Fish and Game

Box 764
Belgrade, Montana 59714

Donald D. Gruel
Montana Department of Highways

Maintenance Division
Sixth and Roberts Streets
Helena, Montana 59601

Clifford Stoltz
Montana Farmers Union

Valier, Montana 59486

This council shall exist until June 30, 1976, or upon completion of work before June 30, 1976.

DEPARTMENT HEAD

George Lackman
George Lackman

Commissioner
Department of Agriculture

Under the Executive Reorganization Act of 1971 (Laws of Montana, 1971, Chapter No. 272), in order for the creation of an advisory council to be effective, the Governor of the State of Montana must approve the creation of advisory councils and file a record of the council in his office and in the office of the Secretary of State.

APPROVED:

Thomas L. Judge
THOMAS L. JUDGE, Governor

DATE 6-25-75

ATTEST:

Frank Murray
Secretary of State
By: Gail M. Leonard, Chief Deputy

DATE June 25, 1975

THE MONTANA WEED LAW

AN ACT ENTITLED: "AN ACT TO DEFINE NOXIOUS WEEDS AND NOXIOUS WEED SEED AND DECLARING THEM A NUISANCE". THE INFORMATION OF NOXIOUS WEED CONTROL DISTRICTS IN EVERY COUNTY, PROVIDING FOR THE MANAGEMENT THEREOF, THE CONTROL OF WORK THEREIN, THE DETERMINATION OF AND LEVYING OF ASSESSMENTS THEREIN: AUTHORIZING A QUARANTINE AGAINST INTRODUCTION OF NOXIOUS WEEDS AND WEED SEED INTO THE STATE OF MONTANA AND INTO ANY COUNTY THEREOF; PROVIDING PENALTIES FOR VIOLATIONS OF THE PROVISIONS OF THIS ACT; AUTHORIZING THE COOPERATION OF THE BOARD OF COUNTY COMMISSIONERS WITH ANY STATE OR FEDERAL AID PROGRAM IN FURTHERING THE OPERATION OF THIS ACT.

(Sections are listed as found in the Revised Codes of Montana 1947 and is written herein to include all the amendments or additions since 1951)

Section 16-1701. NOXIOUS WEEDS DEFINED. The Canadian thistle (cirsium arvense (L) (Scop.), wild morning glory or bindweed (convolvulus arvensis L.) white top (lepidium draba L.), leafy spurge (euphorbia virgata waldst. and kit.), Russian knapweed (centaurea pieris pallas.), and such other weed or weeds as may be defined and designated as a noxious weed by the board of county commissioners of each county, subject to the approval of the county extension agent or agricultural experiment station at Montana state university is hereby declared to be a noxious weed and a common nuisance. Such noxious weeds are hereinafter referred to as "weeds."

Section 16-1702. NOXIOUS WEED SEED. The seed of any noxious weed is hereby declared a common nuisance. Such noxious weed seed is hereinafter referred to as "seed" or "seeds."

Section 16-1703. Weed control and weed seed extermination districts. The area included within the boundaries of any organized weed control and weed seed extermination district shall hereinafter be referred to as the "district."

Section 16-1704. Weed control and weed seed extermination district supervisors. The three persons appointed by the board of county commissioners to supervise the weed control and weed seed extermination within the county shall be referred to as the "supervisors."

Section 16-1705. The board of county commissioners. The board of county commissioners shall be referred to as the "commissions."

Section 16-1706. Willfully permitting noxious weeds to go to seed unlawful. It shall be unlawful to willfully permit any noxious weed, as named in this act, or designated by the board of county commissioners of the respective county, to go to seed on any lands within the areas of any district. This section shall apply to all persons, copartnerships, corporation, or companies owning, occupying or controlling lands, easements, or right of ways, as well as all county, state and federal owned and controlled highways, state lands; also all drainage and irrigation ditches, spoil banks, borrow pits and right of ways for canals and laterals within the district.

Section 16-1707. Quarantine against introduction of noxious weed seed and farm products conveying the same. Whenever the supervisors have reason to believe that farm products, including seed, which will cause the spread of noxious weeds, are about to be introduced into the county, the said supervisors shall declare an embargo against the importation of such farm products and seeds into such county.

Section 16-1708. Embargo against introduction of noxious weed seed from other states. If the department of agriculture believes that movements of grain, plants, seed, tubers, nursery stock, hay, straw, fruit, or other materials containing noxious weed seed or plants dangerous or inimical to the horticultural or agricultural industries are about to be introduced into the state, it may advise the governor. The governor shall, by proclamation, declare an embargo against the importation or shipment of any grain, plants, tubers, nursery stock, seed, hay, straw, fruit, or other materials into the state, except under restrictions established in this act, and provided in the rules adopted by the department of agriculture.

Section 16-1708.1. Rules for enforcement of interstate embargo. The department of agriculture shall adopt all necessary rules in the enforcement of embargo proclaimed as provided in section 16-1708. The department of agriculture, in adopting the rules, may provide for the establishment of inspection stations, the appointment of inspectors, the establishment of the inspection fees, the issuance of certificates, the methods of transporting and packaging, and other rules and procedures necessary to carry out this act.

Section 16-1708.2. Violations of interstate embargo - penalty. Any person who refuses to obey an order of an appointed inspector or willfully disobeys the provisions of this act shall be guilty of a misdemeanor and up conviction shall be fined not less than fifty dollars ($50) and not more than five hundred dollars ($500).

Section 16-1708.3. Dispostion of fines and inspection fees. All fines levied as provided in section 16-1708.2, and all fees collected from inspections shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the department of agriculture for the purpose of administering and enforcing this act.

Section 16-1709.1. Weed control and weed seed extermination districts - formation. A weed control and weed seed extermination district shall be formed in every county of this state and shall include all the land within the boundaries of the county.

Section 16-1710. Notice of hearing. Being Revised.

Section 16-1711. Hearing on petition. Being Revised.

Section 16-1712. Weed control and weed seed extermination districts within corporate limits of cities and towns. Being Revised.

Section 16-1713. Appointment of weed control and weed seed extermination supervisors - term of office - compensation. The board of county commissioners of each county shall appoint a county weed board consisting of three (3) or five (5) members. If a five (5) member board, three (3) members shall be rural agricultural landowners within the county, one (1) from a city or town within the county, and one (1) teachor of biology or person with comparable expertise. If a three (3) member board, two (2) members shall be rural agricultural landowners within the county, and one (1) member shall be a teacher of biology, or person with comparable expertise. They shall be appointed for a period of one (1), two (2), and three (3) years respectively for a three (3) member board or should a five (5) member board be selected, they shall be appointed for one (1) and two (2) year terms respectively dating from the preceding July, and thereafter an appointment or reappointment shall be made annually by the board of county commissioners. The county extension agent in each county shall

be an ex officio member of that county's weed board. Such supervisors shall be public officers, and they shall organize by choosing a chairman and a secretary. The secretary may or may not be a member of the board. Salary, per diem and mileage of such supervisors shall be by resolution of the board of county commissioners. The supervisors may employ suitable and competent persons as assistants and employees as may be necessary and provide for their compensation. It shall be the duties of said supervisors to supervise within their county the control program.

Section 16-1714. Inspection of premises - notice to occupant - possession. Where complaint has been made and the supervisors have reason to believe that noxious weeds described in this act are present upon the lands within the district, in violation of the law, they shall forthwith inspect the premises, and if such weeds are found, they shall cause written notice to be served on the person permitting the same, directing him to comply with the provisions of this act, within a period of time specified in said notice.

Section 16-1715. Destruction of weeds by supervisors if notice not observed - collection of cost. If the notice be not obeyed within the time specified in the notice the supervisors shall forthwith institute control measures and make report thereof to the county clerk, with a verified, itemized account of their services, and expenses in so doing, and a description of the lands involved, and shall include in said account the necessary cost and expense of chemicals, man hours of labor and equipment employed, at a rate paid, in the immediate vicinity, for labor per day and for equipment used for an eight hour day. Such expenses shall be paid by the county out of the "noxious weed fund", and unless the sum, to be repaid by the owner or occupant is not repaid before October 15th, next ensuing, the county clerk shall certify the amount thereof, with the description of the premises to be charged, and shall extend the same to the assessment list of the said county, as a special tax on said land, but if the land for any reason be exempt from general taxation, the amount of such charge may be recovered by direct claim against the lessee and collected in the same manner as personal taxes. When such taxes are collected, they shall be credited to the "noxious weed fund." It shall be the duty of the state board of land commissioners in leasing any agricultural state land to provide in such lease, that the lessee of lands so leased lying within the boundaries of any noxious weed control and weed seed extermination district shall assume and pay all assessments and taxes levied by the board of county commissioners for such district on such state lands, and such assessments and tax levy shall be imposed on such lessee as a personal property tax and shall be collected by the county treasurer in the same manner as regular personal property taxes are collected. All such state lessees shall be required under the terms of such lease to pay such assessment and tax levy at the same time and manner as other regular personal taxes are paid. In effectively controlling such weeds, the supervisors are authorized to take possession and control of any infected tract of land, within their districts, together with any fences or ditches thereon, and to move any fence or ditch where necessary in order to better conduct the control work. If any fence or ditch be moved, the same shall be replaced upon completion of the control work, if requested by the landowner.

In determining what lands shall be included as land covered by the special tax herein and which shall be described in the said certificate of the county clerk, it shall be presumed that all work done upon any of the land of any one landowner shall be for the benefit of all of the land within the district, then, at the time such work was done, belonging to such owner which was contiguous to or joining the piece or parcel upon which such work was done, together with

the piece or parcel upon which such work was so done, and the amount so certified shall so become a tax upon the whole thereof.

Section 16-1716. Destruction of weeds mingled with crop. When in the opinion of the supervisors noxious weeds are intermixed with a growing crop within the district, so that the field is a menance to the district, the supervisors shall have power to order the destruction of the same or such parts thereof as may be necessary. The supervisors may go upon the land infested with the noxious weeds for any purpose necessary to such enforcement, provided, however, that it shall be the duty of the supervisors to confer with commissioners as a board of arbitration, who, when they deem it proper, may extend for one year the order for destruction of the crop containing the noxious weeds.

Section 16-1717. Creation of noxious weed fund by county commissioners - expenditure thereof. The board of county commissioners of any county in this state may create a noxious weed control and weed seed extermination fund, either by appropriating money from the general fund of the county, or at any time fixed by law for levy and assessment of taxes, levy a tax not exceeding two (2) mills on the dollar of total taxable valuation in such county, the proceeds of which shall be used solely for the purpose of promoting the control of noxious weeds or extermination of weed seed in said county and shall be designated to "noxious weed fund" and any proceeds from work or chemical sales shall revert to the noxious weed fund and shall be available for reuse within the fiscal year. This fund shall be kept separate and distinct by the county treasurer, and shall be expended by the commissioners at such time, and such manner, as is by said supervisors deemed best to secure the control and extermination of noxious weeds and weed seed. Warrants upon such fund shall be drawn by the supervisors, provided that no warrants shall be drawn except upon claims duly itemized by the claimant, except payroll claims which shall be itemized and certified by the supervisors, each such claim shall be presented to board of county commissioners for its approval before the warrant therefor shall be countersigned by the commissioners.

Section 16-1718. The supervisors shall have authority to purchase such chemical, material, and equipment as they determine necessary for carrying on an effective control program. Such materials shall be paid for out of the "noxious weed fund." The supervisors shall also determine what chemical, material, or equipment which they may have on hand, shall be made available for distribution to landowners who may wish to control weeds on their own land. The cost for same shall be charged against the said landowner and his land, and collected for as is provided for in this act.

Section 16-1719. County supervisors to control weeds and to exterminate weed seed in the district. The supervisors shall control noxious weeds on all lands within the confines of the district. They shall take particular precautions to control the noxious weeds while preserving beneficial vegetation and wildlife habitat. Where at all possible methods for such control shall include mowing, chemical and biological methods. The total cost of such control shall be paid from the "noxious weed fund." Provided that the cost of controlling such weeds growing along the right of way of a state or federal highway shall upon the presentation by the supervisors of a verified account of the expenses incurred, be paid from the state highway fund. Costs attributed to other lands within the district shall be assessed to and collected from the appropriate holder or owner of interest as set forth in section 16-1706.

Section 16-1720. Commissioners shall determine cost of control and extermination of noxious weed seed and fix the amount to be paid from the noxious weed fund. The commissioners shall determine and fix the cost of the control of noxious weeds and of extermination of noxious weed seed in weed districts whether the same be performed by the individual landowners or by the supervisors. If in the judgment of the commissioners and supervisors it seems advisable they may agree to assist the landowners in said district with a part of the cost of weed control on their land. If this is to be done then in cases where where the landowner controls the weeds and exterminates the weed seed he shall present to the supervisors a duly verified claim for one-third of such cost, and when the same has been approved by the supervisors and commissioners it shall be paid to such landowner out of the "noxious weed fund." When the supervisors do the control and extermination provided for herein weed districts, one-third of the cost thereof shall be paid out of the "noxious weed fund," and the remaining two-thirds shall be charged against the land upon which weed control and weed seed extermination was had, and such two-thirds shall be repaid or collected in the manner hereinbefore provided for.

Section 16-1721. Co-operation with other programs. The supervisors are empowered to co-operate with any state or federal aid program that becomes available. Under such a plan of co-operation the direction of the program shall be under the direct supervision of the supervisors of the county in which the program operates.

Section 16-1722. Penalty for violation of act. Any person who in any manner interferes with the weed control commissioners, weed supervisor or his deputies and employees in carrying out the provisions of this act, or refuses to obey an order of the supervisors, shall be guilty of a misdemeanor and upon conviction thereof, he shall be fined not to exceed a sum of one hundred dollars ($100). All fines, bonds and penalties collected under the provisions of this act shall be paid to the county treasurer of each county, and by him placed to the credit of the fund to be known as the "noxious weed fund."

Section 16-1723. Dissolution of weed control and weed seed extermination district. Being revised.

PROPOSAL

FOR A

STATE WEED MANAGEMENT PROGRAM

BY THE

GOVERNOR'S AD HOC

COMMITTEE OF FARM ORGANIZATIONS AND COMMODITY GROUPS

SHORT HISTORY

In 1967, it was extimated that 930,000 acres of land were infested with the following weeds: Canadian Thistle, Field Bindweed, Leafy Spurge, Whitetop, Perennial Sow Thistle, Russian Knapweed, and Dalmation Toadflax.

The effects of weeds in the state on yields, quality, and increased production costs are well known by agriculturists and are reported to exceed combined losses due to insects, predatory animals, and disease of both plants and animals. In Montana, such costs and losses due to weeds exceeds 60 million dollars per year. This does not reflect the additional costs resulting from human health problems associated with weeds.

In 1969, the Montana Weed Law was revised which established that each of the 56 counties must form a Weed Control District. This action was primarily the result of the expanding noxious weed problems throughout the state.

RECOMMENDATIONS

I. Existing County Weed Programs

Present Weed District responsibilities and duties should remain intact; however, the importance of controlling noxious weeds and their seeds should be stressed more and supported with adequate county mill levy funding.

II. Intrastate and Interstate Embargoes and Quarantines

A. Counties

1. County Embargoes

Section 16-1707 of the Weed Law allows Weed Districts to embargo against the importation of farm products conveying weed seeds into the counties. Weed Boards, if possible, should formally establish such embargoes to prevent introduction of new weeds and re-establishment of existing weeds. Obviously, such embargoes call for the inspection of incoming commodities for weed seeds and would place an additional financial burden on the County Weed Districts.

B. Point of Origin Inspections

To ease this burden and because of the difficulty of inspecting finished and "baled" products, it is recommended that the counties initiate a "point of origin" inspection program. This program may be accomplished by the counties signing an agreement or memorandum of understanding among themselves which would primarily set forth that the county of origin would inspect and issue (or deny) a county phytosanitary certificate substantiating that the product to be imported into another county is free of noxious weed seed or meets an acceptable tolerance level for weed seeds. It is easier and more realistic to inspect fields for weeds than to inspect "finished" products for weed seeds.

Copies of the certificate would be issued to the grower, retained by the county of origin, and one copy would be sent to the county of destination. The county of destination would accept the certificate as compliance with their declared embargo; however, random sampling of shipments would be accomplished to substantiate the point of origin inspection.

C. Uniformity of Embargoes

Certainly we recommend that the embargoes declared by the counties be as uniform as possible for ease of administering the program statewide. We also recommend that the Department of Agriculture, Horticulture Division, and the Extension Service, be provided copies of each county's embargo. The Department of Agriculture could then utilize this information in the State's interstate phytosanitary weed program.

D. State Phytosanitary Program

1. Present Program

The Horticulture Division, Department of Agriculture, presently conducts phytosanitary insect and disease programs for horticulture and vegetable crops (cherries, apples, potatoes, nursery stock, dry beans, etc.) and could certainly assist and administer a weed-free commodity export and import program.

2. Proposed Phytosanitary Weed Program

To accomplish the weed-free portion of the program would require changes in the Weed Law and possibly the Horticulture Law. The program would be conducted in the following manner: Commodities originating in the state for interstate shipment would be inspected and issued a "point of origin" phytosanitary certificate by State personnel.

It should be noted that the State and each county could sign a "compliance agreement" allowing the county to issue the certificate once the State is assured of their qualifications.

The State would require products to be shipped into the state to be "weed-free" (tolerance level) and that a point of origin inspection be made by the state of origin. The particular state of origin would issue a phyto-sanitary certificate. Because of the difficulties of initiating this program, correspondence and agreements with the surrounding states and possibly the Canadian Provinces, would have to be accomplished. The Horticulture Inspection Program for the State would include insects, weeds, and diseases.

3. Quarantine of Weed-Free Areas

The State could possibly establish quarantine areas, which would result in rigid area standards to prevent the introduction of new weeds into these uninfested areas. The details of this program would have to be worked out to accomplish the problems posed by such quarantined "weed-free" areas.

III. State Weed Management Program

A. General Recommendation

We recommend that the Department of Agriculture become directly involved in an enforcement, evaluation, and educational program of noxious weed management. To accomplish these functions, the Weed Law would require amending, primarily the amendments would be in the form of adding new sections to the Law.

B. County Mill Levy

First, we do not recommend any specific modification to the present law in terms of existing district functions, responsibilities and duties except that the provision limiting Districts to 2 mills for weed control be modified. Mosquito Abatement Districts in Montana are allowed to levy up to 5 mills. The advantage to this system is in counties of low population density, a greater levy could be applied to provide the necessary capitol for conducting the required weed control program.

C. Financial Support for State Management Program

1. Statewide Mill Levy

This program would be supported by a mill levy applied per county, not to exceed 0.2 mills. (See list of county mill levies on page 10 and the breakdown of funding per Region on pages 11-12). It should be noted that the mill levy for Yellowstone County was not available at the time of writing. However, one mill in that county is the approximate equivalent to Cascade County's revenue generated from one mill. One mill statewide generates $1,160,000.

A mill levy statewide of 0.1 (one tenth of a mill) per county amounts to $116,025, and a mill levy of 0.12 is $139,230. This amount would support five Weed Specialists the first year and six Weed Specialists in subsequent years.

We propose that a Weed Specialist be stationed in each of the five agricultural districts (please refer to map on page 13). The sixth specialist would be stationed in Helena to serve as a statewide supervisor and coordinator of programs with the other specialists and agencies, especially the Extension Service. None of these individuals would have direct authority over any Weed District Board or personnel. Costs of these personnel are outlined on page 14.

2. Revolving Fund

Another possible cost involved with this program is the establishment of a Revolving Fund. The purpose of this Fund would be to pay for control on the land of individuals refusing to conduct weed control measures. The County Weed District or private applicator hired to control these weeds would be paid from this fund. The funds expended would be replaced in the Revolving Fund by requiring the individual to pay for the cost of application or the bill would be placed on the individual's taxes. A

penalty clause of some sort should also be placed upon the individual, say 5 to 10 per cent of the total bill. The monies derived from this penalty would be placed in the Biological Weed Control Fund, to be expended solely for that purpose. These funds could be expended in biological research, evaluation, or practical application.

D. Contracts With Other Parties

The State should be given the right to enter into contracts with other agencies -- local, State, and Federal, in order to establish research, evaluation, or practical management programs. Research programs would normally be channeled to the appropriate University unit, the Experimental Research Stations, or the Cooperative Extension Service.

E. Acquiring Additional Funds

The Department should be empowered to obtain additional funds directly or indirectly to support any phase of weed management. The primary purpose of these funds should not be to support the State program, but to directly assist Weed Districts and individuals in managing their weed infestations. Indirect assistance to individuals should also be explored. Individuals improving their grazing lands should be able to realize a direct savings because of their efforts, financial and otherwise, in improving their lands for production. The growers improving their crop lands for production should also be able to realize some sort of direct savings for their improvements.

F. Management on Leased State Lands

Presently, it is the responsibility of leasees of State lands to control noxious weeds with no direct or indirect assistance from the State. We recommend that a program of cost sharing or reduction in the rate of payment for the lease be initiated to stimulate improved control of weeds on State lands. Weed control on State lands would directly benefit the land itself as well as the surrounding areas.

G. Federal Lands

The State will also assist counties in establishing cooperative programs with Federal agencies on the management of noxious weeds on Federal lands. This function involves preparing plans for management of weeds at least a year prior to implementation because of the various Federal restrictions on utilizing chemicals on Federal lands.

IV. State Program Elements

The State Program is divided into three parts: Education, Enforcement, and Evaluation.

A. Education

The Department's program of education would be conducted in cooperation with the Cooperative Extension Service, County Agents, and the Weed Districts themselves. Education programs would be directed to assisting Weed District personnel, producers, and the general public. Educational programs should reflect five-year programs of controlling weeds in specific areas, districts, and statewide. Educational programs must continue to be a primary function of the Extension Service with agencies such as Agriculture and the Districts cooperating with and supplementing their efforts.

B. Evaluation

The five Regional Weed Specialists would evaluate weed conditions in their respective regions. This mandatory function would include defining the weed infestations as to types of weeds, acres infested, possible methods of control per county or parts of counties, and region-wide mapping of areas. Once this is achieved, priorities would be established and a plan of action developed. The plan development would be accomplished among all the Weed Districts in the Region. Implementation of the plan would be a combined county-state program. We suggest that the regional plan be based upon a five-year program of management and quarantine, and that the plan include an additional

five-year tentative plan of action. The primary reason for this time element is because it takes three to five years to properly control some perennial weeds. The expense of control must be spread out over a period of time as it is not feasible to expect large outlays of monies by individuals in any one year.

C. Enforcement

The State Enforcement Program would be interrelated with the five and 10-year evaluation, management, and quarantine program. The Weed Specialists would be empowered within their respective regions and under proper supervision, to initiate three to five-year Weed Management Programs per producer or group of producers. This function would have to be mandatory in order to achieve the goal of weed control. It must also be reasonable because of the monies that some producers would have to expend to control the weeds.

Each producer or group of producers would be requested to establish a three to five-year program of weed control on their lands, depending on the type of weed. These producer plans drawn up in cooperation with the Weed District, Weed Specialist and others, would set forth objectives on controlling the weed infestation each year. The producer would be obligated to follow each year's plan in order to achieve the five-year objective. Obviously, the plan must be flexible to allow for unusual conditions, weather, etc., and could be modified to allow for these conditions or utilization of new control methods.

V. Regional Advisory Councils

We recommend that five (5) Regional Advisory Councils be established to insure a coordinated county-regional Weed Management Program. Representation should include a member of each Weed District Board, the County Agent from each county, a County Commissioner from each county, and a farmer/rancher from each county within the District. The purpose of this Council would be to

assist in coordinating county activities and plans, to review and make recommendations on the State's Regional Programs, and to assist in establishing regional priorities and plans of action.

VI. State Advisory Council

We recommend that a State Advisory Council on Weed Management be established to perform the same functions listed under the Regional Advisory Councils, but on a statewide basis.

Representation from this Council could include three members of each Regional Advisory Council. The overall purpose of these two Councils would be to make Montana's Weed Management Programs a citizens program while still achieving our overall objective of preventing weed infestations.

VII. Annual Reports and Plans

A. State and Regional

We recommend that each Regional Weed Specialist be required to submit an Annual Report of each year's activities to the Regional Advisory Council for their review and recommendations. This report must also include a tentative plan of the Specialist's activities for the coming year. The same function should also be accomplished by the State Weed Specialist to the State Advisory Council.

B. County Weed Districts

We recommend that each county be required to submit a comprehensive Annual Report of their past year's activities and functions, and a tentative plan of their activities for the following year to the Cooperative Extension Service and the Department of Agriculture. The purpose of these reports and plans would be to allow for constructed review and criticism of each county's activities and plans.

VIII. Regulations

The Weed Law would have to be amended to allow for the development of appropriate regulations for enforcement purposes and to meet the requirements of the Montana Administrative Procedures Act.

REPORT OF THE STATE DEPARTMENT OF REVENUE

	0.1 Mill	0.12 Mill	1 Mill
Beaverhead	$ 1676.6	$ 2011.92	$ 16,766
Big Horn	2941.2	3529.44	29,412
Blaine	1624.5	1949.40	16,245
Broadwater	591.4	709.68	5,914
Carbon	1727.2	2072.64	17,272
Carter	758.3	909.96	7,583
Cascade	8689.8	10427.76	86,898
Chouteau	2350.3	2820.36	23,503
Custer	1787.1	2144.52	17,871
Daniels	635.0	762.0	6,350
Dawson	1885.2	2262.24	18,852
Deer Lodge	1973.0	2367.60	19,730
Fallon	2563.8	3076.56	25,638
Fergus	2320.0	2784.0	23,200
Flathead	5596.6	6715.92	55,966
Gallatin	4130.5	4956.60	41,305
Garfield	727.0	872.40	7,270
Glacier	2093.7	2512.44	20,937
Golden Valley	390.5	468.60	3,905
Granite	579.5	695.40	5,795
Hill	2540.7	3048.84	25,407
Jefferson	853.4	1024.08	8,534
Judith Basin	977.0	1172.40	9,770
Lake	2257.6	2709.12	22,576
Lewis and Clark	4443.4	5332.08	44,434
Liberty	772.8	927.36	7,728
Lincoln	1875.3	2250.36	18,753
Madison	1496.1	1795.32	14,961
McCone	816.7	980.04	8,167
Meagher	585.1	702.12	5,851
Mineral	388.6	466.32	3,886
Missoula	7305.5	8766.60	73,055
Musselshell	1052.8	1263.36	10,528
Park	1618.1	1941.72	16,181
Petroleum	286.4	343.68	2,864
Phillips	1323.5	1588.20	13,235
Pondera	1677.5	2013.0	16,775
Powder River	3512.3	4214.76	35,123
Powell	909.5	1091.40	9,095
Prairie	567.4	680.88	5,674
Ravalli	1921.2	2305.44	19,212
Richland	2340.7	2808.84	23,407
Roosevelt	1734.5	2081.40	17,345
Rosebud	2566.6	3079.92	25,666
Sanders	2181.5	2617.80	21,815
Sheridan	1394.1	1672.92	13,941
Silver Bow	5844.3	7013.16	58,443
Stillwater	1019.5	1223.40	10,195
Sweet Grass	758.8	910.56	7,588
Teton	1610.4	1932.48	16,104
Toole	1818.6	2182.32	18,186
Treasure	347.9	417.48	3,479
Valley	1972.1	2366.52	19,721
Wheatland	528.7	634.44	5,287
Wibaux	995.9	1195.08	9,959
Yellowstone	8689.8	10427.76	86,898 (Approx
State Total	$116,025.5	$139,230.60	$1,073,385

Corrected Total $1,160,255

Region 1

County		0.1		0.12
Flathead		$5596.6		$ 6715.92
Lake		2257.6		2709.12
Lincoln		1875.3		2205.36
Mineral		388.6		466.32
Missoula		7305.5		8766.60
Ravalli		1921.2		2305.44
Sanders		2181.5		2617.80
	Total	21526.3	Total	25786.56

Region 2

Beaverhead		1676.6		2011.92
Broadwater		591.4		709.68
Deer Lodge		1973.0		2367.60
Gallatin		4130.5		4956.60
Granite		579.5		695.40
Jefferson		853.4		1024.08
Lewis & Clark		4443.4		5332.08
Madison		1496.1		1795.32
Meagher		585.1		702.12
Park		1618.1		1941.72
Powell		909.5		1091.40
Silver Bow		5844.3		7013.16
	Total	24700.9	Total	29641.08

Region 3

Blaine		1624.5		1949.40
Cascade		8689.8		10427.76
Chouteau		2350.3		2820.36
Glacier		2093.7		2512.44
Hill		2540.7		3048.84
Liberty		772.8		927.36
Pondera		1677.5		2013.00
Teton		1610.4		1932.48
Toole		1818.6		2182.32
	Total	23178.3	Total	27813.96

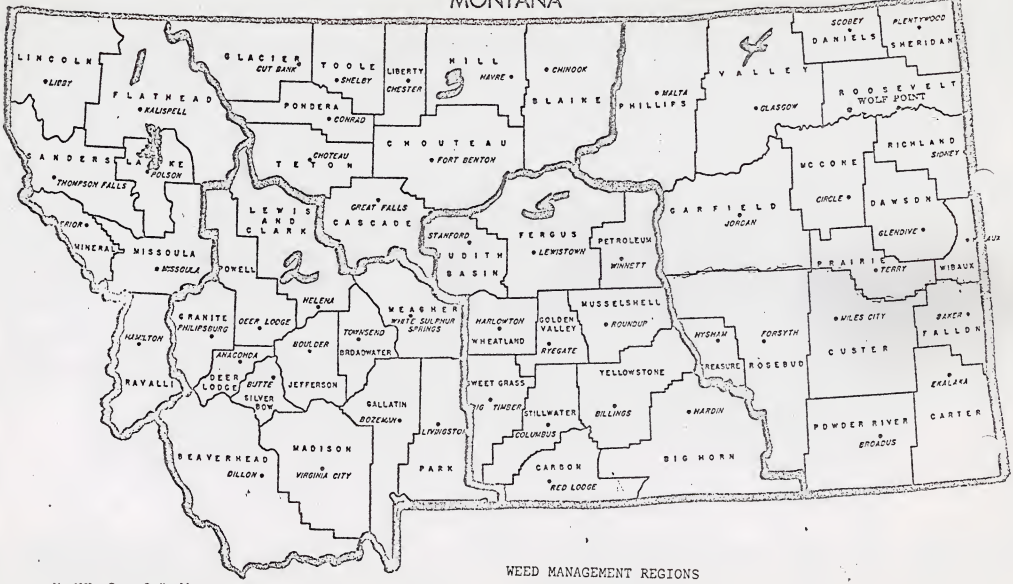
Region 4

Carter		758.3		909.96
Custer		1787.1		2144.52
Daniels		635.0		762.00
Dawson		1885.2		2262.24
Fallon		2563.8		3076.56
Garfield		727.0		872.40
McCone		816.7		980.04
Phillips		1323.5		1588.20
Powder River		3512.3		4214.76
Prairie		567.4		680.88
Richland		2340.7		2808.84
Roosevelt		1734.5		2081.40
Rosebud		2566.6		3079.92
Sheridan		1394.1		1672.92
Treasure		347.9		417.48
Valley		1972.1		2366.52
Wibaux		995.9		1195.08
	Total	25928.1	Total	[illegible]

Region 5

County	0.1	0.12
Big Horn	2541.2	3529.44
Carbon	1727.2	2072.64
Fergus	2320.0	2784.00
Golden Valley	390.5	468.60
Judith Basin	977.0	1172.40
Musselshell	1052.8	1263.36
Petroleum	286.4	343.68
Stillwater	1019.5	1223.40
Sweet Grass	758.8	910.56
Wheatland	528.7	634.44
Yellowstone	8689.8	10427.76
Total	20691.9	24830.28

MONTANA



WEED MANAGEMENT REGIONS

No. 1052 — County Outline Map
STATE PUBLISHING COMPANY
Helena

BUDGET

	F.Y. 76	F.Y. 77
Personal Services		
Salaries	$10,908	$11,424
Employee Benefits	1,418	1,485
Subtotals	$12,326	$12,909
Operations		
Contracted Services	100	100
Supplies and Materials	250	250
Communications and Telephone	1,000	1,000
Travel	3,500	3,500
Rent	750	750
Repair & Maintenance	50	50
Other Expenses	200	100
Subtotals	$ 5,850	$ 5,750
Equipment	4,750	100
Totals	$22,926	$18,759
	x 5 Weed Spec.	x 6 Weed Spec.
Total Program Costs	$114,630	$112,554

QUALIFICATIONS OF WEED SPECIALISTS

- Degree in one of the Agricultural Sciences or Botany
- An agricultural background
- Must be capable of handling public relations
- Must be an aggressive worker
- Must be capable of providing training and education

Appendix IV

Material provided to members of the Council but not included with final report.

1. Montana Seed Law, Parts B and C

2. Cascade County Weed District Annual Report, 1974
   Cascade County Consolidated Pesticide Program - Great Falls, Mt.

3. Federal Interagency Ad Hoc Committee on Preventive Weed Control, March 15, 1968

4. Montana Pesticides Act.

5. Principle of Plant and Animal Pest Control; Weed Control; Volume 2
   National Academy of Sciences, Publication 1597; Washington, DC; 1968

6. Pesticides and the Living Landscape, Robert L. Rudd; The University of Wisconsin Press, 1964; Madison, WI 53701

Noxious Weeds: What Should Be Done?

Good Morning! My name is David W. Armstrong, III and I am currently employed as the Botanist for the Montana Department of Agriculture, Division of Pesticides. My duties as the botanist for the Department include inspections of commercial pesticide applicators, including county weed districts. The initiation and maintenance of a department herbarium to be used for documentation of the Montana weed plant flora and training of applicators in the accurate identification of weed and non-weed plants. I am involved in training of private and commercial pesticide applicators. I inspect areas for alleged herbicide incidents involving damage to crop and non-crop areas. I provide necessary information contained in our files about currently registered herbicides to interested parties. I am involved with this council in an informative and expert capacity. Over the next several months if you need assistance or have questions, please feel free to contact me at any time by phone or mail.

Several weeks ago you received a package of reading materials. These materials were sent to stimulate and direct your thoughts towards the objective this council must ultimately concern itself: noxious plant management.

On the table before you are the materials for today. They are:

1. The Montana Seed Law, Parts B & C
2. The Cascade County Mosquito Abatement District Report for 1974
3. The summary and conclusions to a report prepared by the Interagency Ad Hoc Committee on Preventive Weed Control completed March 15, 1968

I have available for your use, on an individual check-out system, the following material:

1. Herbicide Handbook of WSSA
2. Weed Control by NAS
3. Mode of Action of Herbicides by Ashton & Crafts

4. Nebraska Weeds

5. Agricultural Chemical Handbooks - Herbicides - 1975

6. The Noxious Weed Law from the following states and provinces:

a. North Dakota	e. Idaho	i. Saskatchewan
b. South Dakota	f. California	j. British Columbia
c. Nebraska	g. Washington	
d. Wyoming	h. Alberta	

The Nebraska Weed Law was adopted according to the uniform weed law developed by the National Association of State Departments of Agriculture.

Your function is to gather information on noxious plant management from many sources and evaluate this information for possible legislation in 1977. This information will be gathered from the people you represent and from expert testimony given at these meetings. Please remember: you must keep an open mind. Suggestions for improvement may not be feasible tomorrow, but these changes may become workable after appropriate legislation and gradual implementation.

The Montana Weed Law directed each county in the state to form a Noxious Weed Control District for the express purpose of controlling only those weeds which have been declared noxious within each county. By and large noxious weed control in the state has failed to accomplish the original intent of this legislation--a reduction in the number of acres infested with noxious weeds. In fact, just the opposite has occurred.

The increase in the number of acres infested with noxious weeds has resulted for a number of reasons:

1. Lack of basic knowledge and understanding of plant physiology and morphology.
2. Inability of persons involved in weed control to identify the target plants.
3. Lack of basic knowledge about herbicides and application techniques.
4. Inadequate surveys to pinpoint infestations within each county.

5. Lack of coordination on county-county and county-state levels to control problem weeds within a multi-county area.
6. Lack of knowledgeable personnel involved in weed control at the state level.
7. Lack of understanding by the private, state, and federal landowners that noxious weed control begins on each individuals land.
8. Reliance on herbicide formulations to control noxious weed populations without conscientious investigation of alternative control methods.
9. Declaration of weed plants at the county level as noxious which do not fit the definition of a noxious weed. Some native Montana plants are included.
10. Lack of adequate funding at the county level.
11. Failure of certain county weed districts to obey the directives of the Montana Weed Law.
12. Failure by the public to understand that noxious weeds in sufficient population densitities reduce agricultural crop yields.

Noxious weed problems will be solved by notivating the landowner. The landowner is the Key to noxious weed control in this state. Such inducements as a tax break for the individual that implements control voluntarily; comprehensive five year control plans, and proper enforcement at state and local level to insure constency can help reduce noxious weed infestations in the state.

There is a need for expert advice at the county level from people that have a good technical knowledge of plant physiology and morphology. At present, there are not enough personnel available to give immediate advice and/or assistance to county districts. As a result, advice given by qualified people is usually too late to be of any value during a current control season. People on the ground, in contact with the local situations, is a real need.

Most weed districts (if not all) are hooked on the use of chemical herbicide formulations to control noxious weeds to the exclusion of alternative long-term control possibilities. However, it must be pointed out that most biological control agents used in Montana have (to date) been a failure. Incentives to use available biological control practices must be explored conscientiously and encouraged fully.

Development of a workable phyto-sanitary (clean crop program) will go a long way towards reducing infestations of noxious weeds. Properly organized, sold and implemented at the local level, infestation of noxious weeds infesting range and crops could be dramatically reduced. There must be a direct monetary inducement to the producer for this program to be effective. This kind of a program would require some local county inspectors, but would not put an undue stress on local and state government. One benefit will be the gradual reduction in the cost of noxious weed control to the individual landowner, if a strong program is introduced and enforced.

Any program of noxious weed control must be viewed over a long term of ten to twenty years. Short term, one-shot cosmetic approaches to the problem of plant management are not only irresponsible but unworkable. You that sit at this Council have the chance to strike a blow for a sensible, sane, and workable program of noxious weed plant management which may very well influence the ability of Montana's agriculture system to produce food for a hungry world.

Minutes of the Noxious Weed Advisory Council

September 10, 1975

Members in Attendance	Others
Don Baldridge	David W. Armstrong, III
Dale V. Benge	O. Roy Bjornson
Tom Burns	Gary L. Gingery
L. F. Erpelding	
Donald D. Gruel	
Jack Iman	
M. J. Jackson	
Les Pederson	
Clifford Stoltz	
O. M. Ueland	
Eugene D. Walker	
John P. Weigand	

Gary Gingery welcomed the Advisory Council members for George Lackman, Commissioner of the Montana Department of Agriculture. Mr. Lackman stated that Gary Gingery, Administrator for the Division of Pesticides, was appointed as his liaison with the Advisory Council, that the Council or any individual members desiring information, or data on finances, administration or technical matters relating to the Noxious Weed Advisory Council should request Mr. Gingery's assistance. The department will provide all secretarial services that the Council requires and the following departmental employees, Roy Bjornson, Horticulture Division, Dave Armstrong, Botanist, George Algard, Environmentalist will be available to the Council and can provide expertise in their respective areas.

Mr. Lackman also requested that Mr. Gingery provide copies of the section of the Law 82 (a)-110 and 82 (a)-103 subpart (8) to the Council members which describes advisory council's duties and obligations.

In his address Mr. Lackman stated that the 1975 legislature provided $2,500 for the Weed Advisory Council in this biennium. The council will be limited to approximately 4 meetings this fiscal year. He restated the purpose of the Council and acknowledged that he is looking forward to the Council's recommendations and advice on noxious weed management in the state of Montana. Mr. Lackman's address emphasized that while state regulatory, research and educational agencies must become more involved, weeds and their management, local imput and control by people in governmental units is an essential element of any weed management system. Mr. Lackman stated that any council member having any questions on weed management should feel free to contact him.

Mr. Gingery serving as temporary Chairman opened the session to an election of a Council Chairman. Mr. Dale Benge was elected Chairman unanimously by the members of the Advisory Council and he presided over the remainder of the meeting. After a short discussion the Council decided to elect a Vice Chairman but not a secretary. The Department of Agriculture was asked to provide secretarial services to the Council.

Don Baldridge and Gene Walker were nominated for the position of Vice Chairman. Don Baldridge was elected Vice Chairman.

Following the election the members were requested to determine if they had received all the resource materials submitted to them by the Department of Agriculture and if they desired additional types of resource materials. Department of Agriculture personnel than presented their comments and views on noxious weed management.

Mr. Gingery presented a history of weed control development in the state.

He informed the Council of the Governor's Agricultural Ad Hoc Committee's preparation of a new weed management proposal. Mr. Gingery included the possibility of establishing tax incentives for those producers that carry out long term weed management programs. He mentioned enforcement of penalties for those individuals that do not perform weed control on their land.

Mr. Gingery stated that any weed management program proposed by the Council should be based on meaningful time periods of five, ten or fifteen years. He pointed out that the one-year limitation in the present weed law, was unacceptable. Mr. Gingery mentioned new pesticide regulations to be adopted in the near future on restriction of pesticides and certification of commercial, government and private applicators. He submitted two pieces of material concerning those subjects to the council members. The desirability of speakers from other government agencies, producers and private interest groups presenting their views on weed management to the council during a future meeting was also addressed by Mr. Gingery.

Mr. Roy Bjornson, Administrator of the Horticulture Division, Montana Department of Agriculture spoke about the multiple insepction program. This program has helped the department perform its obligations relative to enforcement of programs and laws. The department is hopeful that the multiple inspection program and laws. The department is hopeful that the multiple inspection program can become involved with parts of the weed management system, specifically the quarantine and phyto-sanitary portions of the program. Quarantine efforts in vegetables, fruit, hay and other crops could be quite meaningful to production of crops in the state of Montana.

A presentation by David Armstrong listed key points as an explanation on the failure of the state weed control programs to date. Attached is a copy of Mr. Armstrong's presentation per the council's request.

The Chairman, Dale Benge, requested that Gary Gingery present information

on the council expenses and per diem mileage. Mr. Gingery presented the necessary forms for signature and explained the process for submitting travel expense vouchers for reimbursement.

The chairman then asked each member on the Council to express their views on weeds and their management in Montana. Following is a synopsis of each individual's views:

Jack Iman: Mr. Iman stated that in Western Montana, forest service land seemed to have numerous weed problems. There have been difficulties between private landowners and the forest service in working out joint agreements on weed management policies. Some of the irrigated valleys have a weed problem and it is difficult to obtain a community weed management program. Mr. Iman mentioned that Sanders County has a problem with dalmation toadflax but he wasn't sure of its effect on agricultural production. Problem weeds in Ravalli County were spotted knapweed, Canadian thistle and leafy spurge.

Ole Ueland: Mr. Ueland mentioned that weeds are a problem to the conservation districts and the grazing district. There is a general consensus among producers that it is virtually impossible to control weeds on rangeland anymore. Mr. Ueland stated that he would like to see better planning used to achieve better control. Mr. Ueland felt that weed districts were not doing enough planning. Weed districts need assistance and financing possibly through ASCP funds, revenue sharing funds and special funding. Mr. Ueland felt that it is time to declare war on weeds and clean up problem weeds one or two at a time.

Tom Burns: Mr. Burns stated that leafy spurge was the major problem in Northcentral Montana. He felt that any weed control program must involve the landowners. Blaine County landowners, Soil Conservation Service and the weed district have set up a weed management program for leafy spurge in and around the valley floor which seems to be quite successful now and will continue to be successful during the next three years. Mr. Burns is convinced that this sort of system is needed statewide.

John Weigand: Mr. Weigand talked about the state weed law and the Fish and Game Department's policy on weed control. He provided an article published in the Montana Outdoors for each council member to review on the position of the Fish and Game Department. Mr. Weigand felt that the present weed law could contribute to elimination of antelope, mule deer and sage grouse habitat with a subsequent reduction in the numbers of these animals in Montana. Mr. Weigand stated that in 1969 studies in England showed evidence that changing cropping patterns altered different plants insect relationships causing a decline in the Hungarian Partridge populations. Mr. Weigand recommended that the council explore the definition of a weed. He would like to see more work done on prevention and biological control of weeds. Mr. Weigand offered to provide a book "Pesticide and Living Landscape" to the council members through the Fish and Game Department.

Mike Jackson: Mr. Jackson talked about weed problems. He gave a short history on the weed law and addressed some of the problems faced in the counties. He felt that people are not always conscientious enough to accomplish control of weeds and that these people must become more conscious of weed prevention. He mentioned that farm and ranch management systems need to be changed to include weed management programs. The farmer-rancher must be informed of the dollar return he can get for his investment in weed control. Mr. Jackson felt that producers in some areas could not handle weed control problems and they were asking for help. He mentioned that the upper stream drainages provided a constant source of weed seed and that control of noxious weeds must begin at the head of these drainages. The philosophy of landowners must change. Good Cropping programs and excellent range do not necessarily control weeds. Mr. Jackson discussed different food reserve systems of plants, how they react to a successful program. He felt that county weed supervisors should be employed 12 months a year. Weed control must be a community approach involving prevention and in some cases, eradication of weeds.

Don Gruel: Mr. Gruel discussed the Department of Highways' Weed Control Environment Impact Statement. He stated that weed districts do most of the control on right-of-ways. Some of the districts have not accepted the philosophy of spot spraying and are broadcast spraying with booms. He discussed highway reseeding. The department uses certified seed but they do not have standards for the mulch. Department policy is that private individuals can mow only adjacent right-of-way land on a first-come-first-served basis. He also mentioned that new right-of-way design standards must be 6 to 1 to allow for more mowing. He felt that construction of new highways unearthed dormant weed seeds.

Les Pederson: Mr. Pederson of the Department of State Lands stated that his department controlled four and one-half million acres of school trust lands. It is the leasee's responsibility to control weeds upon the state lands. The department has a pilot project in Fallon County working with private individuals and federal agencies in the Cabin Creek Drainage to control leafy spurge. The area involves the BLM, Burlington Northern, and private and state lands. An eradication program on the 5,100 acres of land has been implemented. He stated that the department may work more cooperatively with leasees to combat weed problems throught the state.

Clifford Stoltz: Mr. Stoltz stated that Canadian thistle and Whitetop were the significant weeds in his area. Weeds in the canals and alongside the canals were the major problems in irrigated areas.

Gene Walker: Mr. Walker was interested in the certification program for private and commercial applicators. He talked about the problems of weed control on rangeland and stated that leafy spurge was a mjor problem in his area.

Don Baldridge: Mr. Baldridge of the Huntley Experiment Station explained the operation of the Experiment Stations in Montana and he stated their primary job is research and education. They work with chemical companies wishing to register new pesticides. The station's personnel are interested in biological control and would like more work in that area, but that their biggest problem is establishing priorities for research work. This committee may be able to assist them in establishing their priorities.

Larry Erpelding: Mr. Erpelding talked of weed problems in irrigation. He felt that control of introduced foreign plant species into the state by the present nursery licensing program and other mechanisms is a problem.

Dale Benge: Mr. Benge, talked of his experiences with weed control over the years of being a farmer and rancher. He discussed the Powder River County Weed District's purchase of twelve sprayers. Individual producers come in and borrow the sprayers to treat their lands for weeds and return them. The county can provide chemicals to individuals who need it. The sprayers also serve as fire-fighting equipment. He feels that a better definition of "noxious weed" may be needed. The district is attempting to combine spray programs with fertilization. He felt that reseeding is important and that mowing should be encouraged. He was concerned about the highway post reflectors which are treated by the Highway Department with soil sterilants.

The council discussed a possible resolution from various organizational groups as part of the suggestions that the council could make. The council talked about a survey form for surveying each of the 56 weed districts in the State of Montana. A form developed by David Armstrong was reviewed by the members. A decision was made to send this form to the county weed districts under the direction of the council with a letter from Dale Benge to be included. The council would like the questionnaires back prior to the November 12th meeting of the Montana Weed Association.

The council felt that county agents should receive a letter explaining the purpose of the council and the county agents could provide input to the council. The council felt that members should work on the definition of a weed. It was decided that each council member should analyze the Montana Weed Law and the Governor's Ad Hoc proposal and send in their analysis to the Department. The Department will copy their comments and distribute a copy to each member. Mike Jackson felt that the purpose of the weed law is to protect agricultural lands and in analyzing this law or the Ad Hoc proposal, each member should take note of this idea. Section 16-1719 or Page 4 of the weed law was also of concern to the council, and the council members recommended a review of that section closely for possible conflict.

Discussions were also held on districts performing application of herbicides in croplands versus commercial applicators and the council felt that is one thing they will look into as they proceed in their analysis of weed management in the state.

Funding was also discussed. The council felt they must start looking at the various sources of fundings. They also decided that the Association of County Commissioners, the Regional Forester, and BLM officials should be asked to prepare written policy statements of their agency's views of weed management in the State of Montana. The council would then have an opportunity to review the policies prior to agency presentations, thus assisting the council in asking more significant questions. The council established the meeting date for the next meeting to be December 11 and 12, 1975. The meeting was adjourned at 4 p.m.

Minutes of the

NOXIOUS WEED MANAGEMENT ADVISORY COUNCIL MEETING

February 26-27, 1976

COUNCIL MEMBERS IN ATTENDANCE: Dale V. Benge, Chairman; Don Baldridge; Tom Burns; Larry F. Erpelding; Donald D. Gruel; Jack Iman; Gilman H. Mirehouse; Clifford Stoltz; Ole M. Ueland; Eugene D. Walker; John P. Weigand.

OTHER INDIVIDUALS IN ATTENDANCE: David W. Armstrong III, Botanist, Montana Department of Agriculture; Gary L. Gingery, Administrator, Pesticide Division, Montana Department of Agriculture; Oran Roy Bjornson, Administrator, Horticulture Division, Montana Department of Agriculture; Gerald E. Bohne, Regional Director of Engineering, Burlington Northern, Billings, MT; Max Green, Division of Range and Wildlife Management, United States Forest Service, Missoula, MT; Carol Ferguson, State Commission on Local Government; Doug Johnson, Consolidated Pest Program, Cascade County, Great Falls, MT.

The meeting was brought to order at 10:00 A.M. by Chairman Dale Benge. Each member and guest was asked to introduce himself.

The minutes of the meeting were read and approved unanimously as written. The Chairman asked for discussion of any old business. Dave Armstrong was asked to report on his survey of the county weed districts in the State of Montana. Mr. Armstrong presented his compilation of the county noxious weed control programs for 1975 and provided each member with a copy. He stated that any member desiring to obtain

information on a specific county may do so upon request. In addition, Mr. Armstrong mentioned that information can be provided from a new booklet that the department just received concerning the mill levy applied per county for weed management and the dollar value of such a mill levy per county. The Council agreed that it would be desirable to have such a list developed and provided to each member. (Note: A list of mill levies for weed control in each of the counties in Montana is attached to the minutes of the meeting.)

The members of the Council commented on the compilation of the noxious weed control programs. The Chairman asked about the need for increasing the list of weeds. Discussion at some length was also held on questions of conflict between county operation and commercial applicator and dealer operations. It was decided that additional information was necessary to fully obtain an opinion or recommendation on how this issue can be handled.

The Chairman then requested the guests in attendance to present any information they thought would be useful to the Council. Doug Johnson, the Director of the Consolidated Pest Management Program for Cascade County, presented a detailed report on Cascade County's operations in the areas of weeds, mosquitoes, and rodents. He indicated that the combination of all these programs into one operation has benefited the county by reducing administrative costs. This allows the county to

employ professional and clerical personnel year round, and mechanics who can refurbish and restore the trucks and spraying equipment. Consolidation has allowed the county to build joint facilities. They have also obtained helicopters and trucks from the Civil Defense. In summary, Mr. Johnson basically indicated that the program is very sophisticated. The district looks into all aspects of managing a weed or pest control operation ranging from such items as protective equipment to employees to establishing plans and surveys for the various pests of concern. The other important point mentioned was that an educational program is carried out by Cascade County in which producers and other interested individuals are shown what the program is about, how much it costs, and what its benefits are. Ole Ueland asked if the cooperation in Cascade County by producers and citizens was good. Mr. Johnson stated that he thought it was and would improve as additional public educational and community meetings are held. He also stated that as additional parts of projects are carried out on the river drainages, cooperation by producers should continue to increase.

Noel Rosetta, who represented four environmental groups talked about his experiences with range management and that chemicals are not always the best method used to manage noxious weeds. Mr. Rosetta gave a very interesting slide presentation, most of which was covered in his written presentation to the department and Council prior to the meeting.

Max Green from the United States Forest Service in Missoula talked about noxious weed problems on forest land and the difficulties of over-grazing that the Forest Service has experienced. Weeds invading logged areas cause problems on forested lands. He pointed that the Forest Service has cooperated with weed abatement districts and will continue to do so in the future. He was highly concerned about the possibility of counties having some sort of control over Forest Service lands. This was discussed by the Council, but no specific recommendation was made. The other aspects of Mr. Green's conversation were fairly well covered in his written presentation to the Council.

Gerald Bohne from Burlington Northern in Billings discussed the problem of carrying out weed management programs on its rights-of-way through 45 counties and approximately 5,000 miles of track in the State of Montana either by commercial contracts, by allowing weed districts to do it, or by doing it themselves. He stated that Burlington Northern was willing to cooperate with districts in carrying out plans. However, advance plans and work schedules had to be worked out in order to allow the proper timing for controlling noxious weeds along the Burlington Northern rights-of-way. The Council discussed the control of noxious weeds on railroad rights-of-way with Mr. Bohne at some length.

Carol Ferguson, State Commission on Local Government, spoke to the Council briefly. She discussed the activities of the Commission on Local Government in redrafting local laws, including the Weed Act. She expressed an interest in working with the

Department of Agriculture and the Council on these drafts.

The remainder of the Council's meeting of February 26 and the meeting the morning of February 27 until noon was spent discussing each provision of the Montana Weed Act and the written comments of the law by Council members. Specific modification and changes discussed by the Council will be presented in an attached document which implements the Council's recommendations on the weed law.

The Council agreed to holding the next meeting on April 21-22 in Helena.

The meeting was adjourned.

MONTANA WEED CONTROL DISTRICTS

COUNTY	MILL LEVY WEEDS	1-MILL COUNTY	WEED BUDGET
Beaverhead	0.65	$ 16,098	$ 10,464
Big Horn	0.20	40,619	8,124
Blaine	1.20	17,572	20,846
*Broadwater	1.85	5,704	10,552
Carbon	1.31	19,864	26,022
Carter	2.00	7,393	14,786
Cascade	1.42	87,547	124,316
Chouteau	1.95	24,059	46,915
***Custer	0.25	16,999	4,250
Daniels	1.25	6,930	8,663
Dawson	0.70	19,796	13,857
Deer Lodge	0.50	21,588	10,794
Fallon	0.586	34,112	19,990
**Fergus	-0-	22,683	App. from Gen. Fund
Flathead	1.030	57,181	58,896
Gallatin	0.86	47,395	40,760
**Garfield	-0-	6,934	-0-
Glacier	1.31	27,777	36,388
Golden Valley	1.50	3,652	5,478
Granite	1.58	6,048	9,556
Hill	1.546	26,312	40,678
Jefferson	0.51	9,082	4,631
*Judith Basin	1.97	9,261	18,244
Lake	1.330	23,649	31,451
Lewis and Clark	1.09	46,507	50,693
Liberty	1.00	9,565	9,567
Lincoln	0.720	20,237	14,571
Madison	1.59	15,304	24,333
McCone	2.00	8,748	17,496
Meagher	0.39	5,580	2,176
Mineral	0.52	3,940	2,048
Missoula	0.99	75,727	74,970
Musselshell	0.48	17,910	8,597
Park	0.55	17,363	9,550
**Petroleum	-0-	2,916	-0-
Phillips	1.47	12,903	18,967
Pondera	2.00	17,727	35,454
***Powder River	0.75	74,142	55,607
Powell	2.00	9,068	18,136
Prairie	1.43	5,556	7,945
Ravalli	1.31	19,836	25,985
Richland	1.06	28,910	30,645
**Roosevelt	-0-	18,927	-0-
Rosebud	0.808	42,958	34,710
Sanders	1.875	17,946	33,649
Sheridan	0.20	19,217	3,843
Silver Bow	0.51	63,925	32,602
Stillwater	0.44	11,633	5,119
Sweet Grass	1.50	7,345	11,018
Teton	2.00	17,097	34,194
Toole	1.30	24,000	32,000
**Treasure	-0-	3,592	-0-
Valley	1.75	19,851	34,739
Wheatland	1.31	5,286	6,925
Wibaux	0.28	11,455	3,207
Yellowstone	0.38	142,009	53,963
TOTAL	56.205	----	1,236,470

*Not levied against taxable valuation of municipalities
**No figure given, MT Property Tax Mill Levies 1975-76, MT Taxpayers Assn.
***Survey of Weed Districts by Weed Advisory Council

STATE OF MONTANA
DEPARTMENT OF AGRICULTURE

PESTICIDE DIVISION

THOMAS L. JUDGE
GOVERNOR

AIRPORT WAY BUILDING WEST
1300 CEDAR STREET
HELENA, MONTANA 59601
TELEPHONE: 406-449-3730

GEORGE LACKMAN
COMMISSIONER

September 19, 1975

Chairman, County Weed Board

Dear Sir:

On June 26, 1975 the Governor ordered the creation of the Noxious Weed Management Advisory Council. The creation order stated that, "The purpose of the council shall be to review existing government and private weed control programs, inventory weeds and acreage infested in Montana, evaluate the economic and environmental effects of weeds on agriculture and livestock, to develop recommendations for improving the management of weeds in the state, to develop appropriate legislation, if necessary, to be presented to the Governor and the 1977 legislature".

Enclosed is a survey form developed to assess the noxious weed problem within the state. It is important that the information which has been gathered in your county during 1975 season be assimilated and prepared for this council to provide direction for appropriate change. The importance of this input to the council from each County Weed District is paramount.

Several districts have completed a survey for the 1974 season. If your district has done so, please complete this survey for 1975. Use the enclosed self-addressed stamped envelope to return the completed survey by November 7. The data will be collated, summarized and presented at the annual Montana Weed Control Association Meeting November 13 and 14 and to Council prior to their December 11 and 12 meeting.

If at any time the board has any questions regarding this survey or the functions of the Council, please contact any of the Council members (see attached list) or the Department of Agriculture. Feel free to enclose your comments and ideas on weed control with the survey.

Sincerely yours,

Dale V. Benge, Chairman
Noxious Weed Management Advisory Council

Enc.

A COMPILATION

OF THE

COUNTY NOXIOUS WEED CONTROL PROGRAMS FOR 1975

On September 19, 1975, at the direction of the Noxious Plant Management Advisory Council, a survey form prepared by the Department of Agriculture's Botanist, David W. Armstrong III, was sent to each chairman of the 56 county weed districts in Montana. The purpose of this survey was to assess the extent of the noxious plant control efforts within this state by individual counties. The counties submitting completed reports are as follows:

Beaverhead	Judith Basin	Sanders
Big Horn	Mineral	Sheridan
Blaine	Missoula	Silverbow
Cascade	Park	Stillwater
Custer	Phillips	Sweetgrass
Dawson	Pondera	Teton
Fergus	Powder River	Toole
Flathead	Powell	Valley
Gallatin	Ravalli	Wheatland
Glacier	Richland	Wibaux
Hill	Rosebud	Yellowstone

These 33 counties represent 58.9% of the counties in Montana, covering every geographical region equally well. The data submitted by these counties when compiled into the final form will allow valid conclusions to be drawn about the state of noxious plant management in the state.

The survey was designed to seek answers to specific questions about the control efforts of individual counties within the state. There have been some suggestions by differing groups of people that not only is the noxious plant

problem in this state growing but that the county weed districts are incapable of directing their efforts in a positive manner. This report intends to address these allegations directly.

A brief description of the letters used in compiling the report is in order. "A" is the average number obtained by dividing the total number of entries "T" by the number of surveys returned "N." The numbers that were obtained from the compiled surveys will provide a basis for determining the quality of work accomplished by the county noxious plant control programs. Each question on the questionnaire will be individually addressed before any conclusions are derived.

Questions 1, 2, and 3

Not applicable to a consolidated survey.

Question 4

In 1975, the number of county weed meetings held in individual counties ranged from 0 in one county to 22 in another. Seven counties held 12 meetings during that time. The average number of meetings held in 1975 was 7.

Question 5

Much attention has been focused on control of plants declared as noxious at the county level in addition to the five declared by the Montana Weed Act. The survey reveals that in addition to the five declared by the Act, 28 additional plants have been declared as noxious by county commissioners in at least one county and in some cases several counties. For these listings, the X/33 is the number of counties of the

33 completing the survey that have a particular plant declared as noxious. The figure behind the plants declared by the Act as noxious is the approximate number of acres infested in these 33 counties.

Questions 6 and 7

These two questions were used to determine the extent of the control effort aimed at the road rights-of-way within the counties. In this case, N=32 because one county did not have the information available to answer the questions. It must be pointed out that the numbers presented refer to the number of miles covered by the county, not the total number of miles sprayed with an herbicide. Most counties conduct a spot spray program, not a broadcast spray program. Virtually every mile of road in every county is being covered and spot sprayed for noxious weed control. The number of total acres covered is large but the number of total acres sprayed is probably much smaller.

Question 8

Of the 26,859 acres sprayed for noxious weed control by the county, approximately 10,000 of those acres were sprayed by the Missoula County District. Included in this figure are both the acres sprayed at the request of the landowner and the acres in which the county initiated control measures. Question 19 deals with this last point in more detail.

Question 9

Only ten counties conducted any control work for the railroads, and this was a minimal amount. It must be assumed then that the railroads are either conducting their own programs or that they do not have a significant problem with noxious plants.

Question 10

Of the 33 counties reporting, only 8 conducted any control programs along waterways. This would indicate a rather insignificant control effort directed in these areas.

Question 11

The county districts must not consider that Federal land is within their jurisdiction, considering that only 3 counties conducted a program on 545 acres within this state.

Question 12

No comment.

Question 13

No comment.

Questions 14 and 15

Of the 33 counties reporting collectively, they are levying only 40.284 mills or an average of 1.22 mills each. Nine counties levied the full two mills and two counties levied none. This seems odd, especially since one of the major complaints by the districts is that they cannot operate with the present two mill limit. These 33 counties also employ a total of 205 people for control work or an average of 6.21 per county. The survey did not ask the county to designate those people

employed full time year round and those employed full time for just a portion of the year. For this reason the figures on employees have been lumped. There are very few people hired by the counties to conduct a weed control program on a full calendar year basis.

Question 16

Not applicable.

Question 17

What is indicated here is that more work needs to be done in the areas of bio-control and educating the county districts in the use and advantages of such programs.

Question 18 (a) and (b)

Question 18-a: This will be addressed with Question 19.

Question 18-b: It would seem that both the counties and the Department of Fish and Game need to conduct some public relations work in order to work out acceptable solutions which are agreeable to both parties to control noxious plants on Fish and Game land.

Question 19

Question 8 asked for the total number of farm acres that the county had conducted control work on. That total was 26,859. Question 18-a asked for the number of acres that the county had been requested to control noxious plants on. That total was 19,600. Question 19 asked how many acres the county initiated control on. That total was 19,820. Totaling 18-a and 19 results in a figure of 39,420 or 12,561 more acres than listed in Question 8. This indicates that the counties are

either not keeping accurate records or that they do not understand the definition of ititiate. The latter is probably the case because the figures listed in Questions 18-a and 19 are very close together. Using the figures from 18-a and 19 gives an average of 1,194.54 acres of private land sprayed for noxious weeds in each county.

Question 20

The embargo section of the Act is not currently being utilized to the fullest extent allowed by the Act. This is probably due to a poor coordination between counties and the lack of sufficient funds generated at the county level.

Question 21

Of the 3,025 acres quarantined by two counties, one county quarantined 25 acres of hay infested with whitetop. The remaining 3,000 acres were quarantined by the other county. Again, lack of sufficient manpower and funds keeps most counties from enforcing this provision of the Act.

Question 22

No comment.

Question 23

Not applicable.

Question 24

Not applicable.

Question 25

This will be addressed in the discussion which follows.

Question 26

The maps were not available for the counties to fill out.

Question 27

Not applicable.

Discussion

This survey indicates that the county weed districts are doing an excellent job of controlling noxious plants along county and state road rights-of-way. However, these are the only areas where the districts are conducting a comprehensive control program.

Part of the problem arises from the authority granted by the Act which allows the county commmissioners to declare any plant a noxious plant without apparent regard as to whether a particular plant in fact represents a significant threat to agriculture or to human health. Of the 28 additional plants declared as noxious in at least one county, only the following pose a real economic threat to agriculture: Dalmation toadflax, Halogeton, Musk thistle, Puncture vine, Tansy, Common toadflax, and Perennial sowthistle. The other plants are either so common as to be completely uncontrollable (Wild oats) or they do not pose a threat to the competent agricultural producer. Just because an area has many acres of a single plant (Spotted knapweed) does not mean that the particular plant involved poses a serious economic threat to the agricultural producer that manages his land well. To say that

the plant poses a problem is one thing, but to declare that plant a noxious weed is quite another. The county weed districts have got to eliminate some of these plants from the noxious weed list and concentrate on those plants that pose a serious economic problem (Leafy spurge). The age of priorities is with us and the districts have to join the program.

The county weed districts are involved in a direct conflict of interest with the commercial pesticide applicators by engaging in custom application under contract for the control of noxious weeds. This activity should be left with the commercial people and not with a government agency. The county district should function only under the three E's: Education, Enforcement, and Evaluation. Currently the 33 counties reporting are hiring 205 people for at least part of the year to work in weed control. Extrapolation of this data to 56 counties indicates that approximately 348 people are involved in noxious weed control at some time during the year. If you accept the figures that there are about 1,000,000 acres of noxious weeds in the state, then each of the above 348 people is responsible for about 2,874 acres of noxious weeds.

Many counties are arguing that they cannot adequately fund their county weed districts under the provisions of the current Act. Section 16-1717 allows the county to either levy a 2 mill tax on the total valuation in the county or to fund the district with an appropriation from the general fund.

Funds from the general fund are not limited by law. This means that any county can fund its own district with as much money as is required to get the job done. The average mill levy for county districts is only 1.22 mills. This would seem to indicate that the average county is meeting its priorities under the current mill levy allowance.

The embargo section of the Act cannot be administered by the counties because they could not afford a comprehensive program and the manpower involved in each county would be excessive. The answer to the problem with embargoes is complex. It would involve an interaction between the state, federal, and neighboring states' programs to insure an effective program. Intrastate inspection of agricultural commodities is at the present time politically improbable due to the large amount of money which would have to be spent to set up the program.

Our recommendations for change in the weed law which would allow the county to assume a more productive role are included in our comments on the Act and in the suggested changes for the Act.

CONFIDENTIAL -- For Departmental Use Only

Report of County Noxious Weed Program

1. County _____ Year _____

2. Members of County Weed Board:

Name	Address	Phone
N/A Chairman		

3. Person in charge of field crews and equipment (Supervisor):

N/A

4. How many Weed Committee meetings were held last year? A=8; T=251; N=33

5. Estimated noxious weed infestation in county: Using the number assigned to each category, mark the estimated number of acres each weed declared noxious occupies in your county. Please write in the name of each weed (other than the five declared by State Law) declared as noxious in the county on the line provided.

	Noxious Weed	Acreage
1.	Baby's Breath	3/33
2.	*Bindweed (morning glory)	33989 acre
3.	Blue Lettuce	4/33
4.	*Canadian thistle	46299 acre
5.	Burdock	8/33
6.	Caraway	3/33
7.	Cocklebur	1/33
8.	Common Milkweed	2/33
9.	Common Toadflax	9/33

	Noxious Weed	Acreage		Noxious Weed	Acreage
10.	Cypress spurge	1/33	22.	Musk Thistle	3/33
11.	Dalmation Toadflax	12/33	23.	Ox Eye Daisy	4/33
12.	Dyerswoad	1/33	24.	Prickly Lettuce	2/33
13.	Ground Cherry	2/33	25.	Puncture Vine	2/33
14.	Halogeton	2/33	26.	Quack grass	1/33
15.	Hemlock	7/33	27.	*Russian Knapweed	9769
16.	Henbane	1/33	28.	Spotted Knapweed	14/33
17.	Hounds tongue	7/33	29.	Sow thistle	7/33
18.	Larkspur	1/33	30.	Tansy	7/33
19.	*Leafy spurge	33988 acres	31.	*Whitetop	14475
20.	Matrimony Vine	1/33	32.	Wild Licorice	5/33
21.	Mullan	2/33	33.	Wild oats	1/33

*Declared noxious in all counties by state law

6. a) How many miles of county roads were sprayed with an herbicide? A= 1135.66; T=36341; N=32

   b) How many miles of county roads were mowed? A=642.06; T=20546; N=32

   c) How many miles of county roads are in your county? A=1485.41; T=47533; N=32

   d) What kinds (brand names) of chemicals did the county use in controlling noxious weeds? N/A

7. a) How many miles of State highways were sprayed with an herbicide by the county? A=133.81; T=4282; N=32

   b) How many miles were mowed? A=21.59; T=691; N=32

   c) How many miles of State highways are in the county? A=157.31; T=5034; N=32

   d) What kinds (brand names) of chemicals were used? N/A

8. a) How many acres of farmland were sprayed for noxious weed control by the county? A=813.91; T=26859; N=33

b) How many acres were mowed? T=50; N=1

c) What kinds (brand names) of chemicals were used? N/A

9. a) How many miles of railroads were sprayed for noxious weed control by the county? T=386; N=10

b) How many miles were burned for weed control? T=0

c) What kinds (brand names) of chemicals were used? N/A

10. a) How many miles of waterways (streams, rivers, irrigation ditches) were sprayed with an herbicide for noxious weed control? T=333; N=8

b) What kinds (brand names) of chemicals were used? N/A

11. a) How many acres of Federal Lands were sprayed by the county for noxious weed control? T=545; N=3

b) How many acres were mowed? T=0

c) What kinds (brand names) of chemicals were used? N/A

12. Were any actions taken to require cleaning of articles contaminated with weed seed or parts (feed grain, machinery, etc? No action taken.

If yes, what?

13. Did the county take any follow-up action on any site or area following the initial control during the last year? Yes: 29 No: 4

If yes, which of the following:

a) Respray 25

b) Remow 4

c) Seeding 3

d) Survey of area where control was initiated 17

14. What is the mill levy for noxious weed control in the county? A=1.22; T=40.284
9: Levy 2 mills; 2: Levy 0

15. How many people does your county hire for noxious weed control? 12,6,3
T=205

a) How many are part-time? A=6.21 b) Full time? 0

16. What kind of equipment does the county use to control noxious weeds?

N/A

17. a) Has the county looked into the possibilities of biological control of noxious weeds? Yes: 16 No: 17

b) For what noxious weed is biological control being used? Leafy spurge, Musk thistle, Canadian thistle, Goatweed, Spotted Knapweed

c) What is being used?
Leafy spurge hawk moth, Rhino beetle, Sheep, Painted Lady Larvae, Gall fly

18. a) Was the county requested to control noxious weeds on any private land? Yes: 22 No: 11 b) How many acres? 19600

c) Is the county involved in a cooperative weed control effort with the Department of State Lands or Fish & Game? Yes: 5 No:28

d) To what extent? Weed free hay; Control of Leafy spurge; Mechanical removal of Dalmation Toadflax

19. a) Did the county initiate control measures on any private land for noxious weed control? Y= 16; N=17 b) How many acres? 19820

20. a) Does the county have any embargoes on agricultural products shipped into the county? Yes: 3 No: 30

b) Were any agricultural crops or commodities (hay, seed, cattle, etc.) inspected for weeds or weed seeds? Yes: 2 No: 31

c) What commodities were inspected? Hay

d) What action was taken? Inspected for the clean hay program

21. a) Did the county quarantine any lands because of noxious weed infestations? Y:2 N:31 b) How many acres? 3025 acres hay

22. a) Were there any incidences of overspray by the county involving damage to private land? Yes: 0 No: 33

b) How many?

c) How many acres?

23. What are your most critical noxious weed control problems in your county?

N/A

24. What specific weed control measures are being planned for the coming year?

N/A

25. a) Can the State Department of Agriculture assist you with noxious weed control? Yes: 15 No: 18

b) In what way? 1) State, Federal, and Railroad cooperation; 2) Raise mill levy; 3) Serve in an advisory capacity; 4) Inspect agricultural products coming into state; 5) Full-time Weed Specialist; 6) Advise on proper chemicals & application techniques; 7) Identify problem areas; 8) Provide information; 9) Research cost/benefit ratios for weed control; 10) Help counties financially; 11) Provide education; 12) Prevent intrastate movement of uninspected commodities.

26. The maps of your county that are enclosed are printed by the State Department of Highways. The particular set with this questionaire is on the scale of 1/2 inch equals one mile. Please take some time and accurately outline the actual area of EACH noxious weed in your county. Use different colored felt-tipped pens and be sure to write a key as to the weed and corresponding color used to denote that weed. Be as accurate as you can. Please do not overestimate.

NOT AVAILABLE

27. If there is any other information which the county feels is important but was not covered by the above questions, please include them below.

Additional Comments on the Montana Weed Law

It is our feeling that the Montana Weed Law could be revised into a useful instrument for use in the control of noxious plants in the state. As with any law, it can be only as effective as the enforcement of its provisions and the integrity of those designated to carry out these provisions. It is our hope that the ideas and suggestions presented here will set the stage for some much needed changes in the current MOntana Weed Law.

Under Section 16-1722 of the current law, there is no fine for violating the provisions of the Act. Thus there is no deterent to the abject refusal to comply with the directives of this law by nearly all landowners whether private, state, or federal. Supervisors electing to control noxious plants on the property of a person in violation of the weed law and who refuses to conduct a control program, should bill that landowner for the control services rendered at the going rate for commercial pesticide applicators plus a fine of 25% of the total control costs to be attached to the final bill. Only by making it economically unfeasible for the landowner to let noxious weeds proliferate on his land will the landowners in this state begin to do the control work that is necessary.

Government units cannot and should not do all of the control work for landowners in this state. The landowner must be motivated to conduct needed control work on his own land. Landowners conducting their own control programs should be allowed to write off the costs of such control work on their property taxes. The county weed district personnel should assist the local landowners in the planning of long-term (5 to 20 year) control programs that would eventually lead to the control of noxious plants on that landowner's property.

The current weed law does not provide a suitable definition for noxious plants listed in the Act. We feel that the following definition should be included in the law and that any plant deemed as noxious should meet the requirements of this definition: "A weed is any living plant which by its presence reduces land productiveness for man's benefit. A noxious weed is any biennial or perennial weed plant capable of becoming established in a suitable habitat either by seed, root part, or modified stem which is extremely resistant to mechanical, biological, or chemical control and which may render agricultural or commercial land unfit for use, is damaging to livestock, or dangerous to humans." Authority given the county commissioners in each county to designate any plant as noxious should be removed from them and placed with those having a technical knowledge of the habits, life history, and possible economic consequences of a particular plant. A

reviewing group composed of the Cooperative Extension Service, the College of Agriculture, and the Montana Department of Agriculture should review applications for plants to be included on the noxious weed list. Any plant declared as noxious should be declared as such throughout the state and not just in an individual county.

Adjoining counties should be allowed to consolidate their control programs through joint expenditures of money and sharing of equipment. This would allow counties with low populations to join programs thus relieving each of the responsibility of maintaining two separate systems.

The current weed law does not allow the state to enforce any of the provisions of the Act except the embargo section, 16-1708. This is a serious oversight. The Department of Agriculture should have some authority to insure that a coordinated control program is carried out within all counties in the state.

The use of remote sensing techniques which are currently being developed could be used to determine the absence or presence of noxious plants in the various crops raised in the state. This information could serve as the basis for the issuance of a phytosanitary certificate to those producers whose crops meet certain minimum standards of freedom from noxious plants, parts, and seeds. Such a certification system could be used to allow producers to sell their products at a higher price.

This department needs to have more people involved with the management of noxious plants to assist in the coordination of an overall state program to reduce the number of acres infested with noxious plants. It is the feeling of this department that effective noxious plant management can be accomplished only by applying the triad system of enforcement, education, and evaluation.

RECOMMENDATIONS FOR MODIFYING THE MONTANA WEED ACT

RECOMMENDATIONS FOR MODIFYING THE MONTANA WEED ACT

Section 16-1701

Change the following generic plant names to accepted modern terminology: Lepidium draba to Cardaria draba; Euphorbia virgate to Euphorbia esula; and Centaurea pieris to Centaurea repens. Change the "or" between "county extension agent or agricultural experiment station" to "and the. . ." Delete "and a common nuisance" and "Such noxious weeds are hereinafter referred to as weeds."

Explanation: A formalized procedure for petitioning the research center at Bozeman should be implemented to insure that only those plants that meet the accepted criteria for a noxious weed are designated as such. If the county agent and the experiment station deny the petition, then such denial must be enforceable.

Comment: We recommend that an improved definition section be added to clarify the following: person, corporation, weed, noxious weed, weed board, supervisors, crop, district, etc.

Section 16-1702

Delete the term "common" and "Such noxious weed seed is hereinafter referred to as seed or seeds."

Explanation: The term "common" is not needed to define "nuisance which is adequate by itself. The last sentence is not necessary because the distinction between "noxious weed seed" and other kinds of seeds should be maintained.

Section 16-1703

Not necessary because of Section 16-1709.1. Should be included in the definition section.

Section 16-1704

Not needed because of Section 16-1713.

Section 16-1705

Should be included in a definition section.

Section 16-1706

Delete the word "willfully" from this section. Delete the last sentence starting with "This section ... and ending with ... within the district." Include the specific designations in a definition section.

Explanation: We believe the word "willfully" as used in this section presents a problem with the interpretation of this law. Willfully implies intent on the part of the individual in letting noxious weeds go to seed on his land. We do not believe that any individual intends to let noxious weeds go to seed nor do they propagate them. A test case of this portion of the law could very well tie up the use of this act because of this one word.

Comment: We recommend the following changes in this section: It shall be unlawful to permit any noxious weed named in this act to go to seed or to self-propagate vegetatively on any lands within each district in the state. It shall be unlawful to permit any noxious weed declared by the Board of County Commissioners of a respective county to go to seed or to self-propagate vegetatively on any lands within that specific county.

Section 16-1707

This section is impractical and is impossible to administer. Provisions should be made to enforce requirements that farm products transported within the county should be transported under tight cover. The county district foreman should be given the right to assess administrative penalties. This will be pursued further in Section 16-1722.

Section 16-1708; 16-1708.1; 16-1708.2; 16-1708.3

These sections need to be rewritten completely to insure that they could be effectively enforced.

Section 16-1709.1

No comment.

Section 16-1713

Does the per diem and mileage need to be paid at the rate established by law? This section mentions assistants and employees and other sections use deputies and employees. A uniform statement addressing this should be included in a definition section.

Section 16-1714

Delete the following: "and"; "described in this act"; "the"; "in violation of the law"; and "such." Change wording to: Where complaint has been made or the supervisors have reason to believe that noxious weeds are present upon any land within the district, they shall, upon procurement of a lawful warrant, inspect the land and if any noxious weeds are found ....."

Explanation: The present wording indicates that there must be a complaint and that the supervisors believe that there are noxious weeds present before they can conduct an inspection that is probably illegal without a warrant in hand. Changing the wording allows the supervisors to obtain a warrant if there has been a complaint or they believe that noxious weeds are present. As stated in Section Section 16-1706, noxious weeds on any land within a district are illegal so the wording "in violation of the law" is redundant.

Section 16-1715

Delete the last sentence of the first paragraph and the entire second paragraph. Other deletions are as underlined. Change wording to: If the notice served as in Section 16-1714 is not observed within the time specified, the supervisors or their assistants, upon procurement of a lawful warrant, shall institute control measures upon the land designated in the notice and submit to the County Clerk an itemized account of their services and expenses. The itemized account shall include the cost of the chemicals applied, a legal description of the land involved, man hours of labor and equipment employed at the rate paid for commercial pesticide applicators in the immediate vicinity. Upon completion of control measures implemented under the served notice, an appropriate penalty described in 16-1722 shall be applied to the total cost. Other minor changes as indicated.

Explanation: Basically what we have done with the first part of this section is to improve the wording. We feel that the county must have a warrant before they can legally implement any control measures on any land infested with a noxious weed.

The part which states that the county must charge the going commercial rate for local pesticide applicators removes the county from the commercial applicator business. The penalty to be assessed will be addressed later in the appropriate section.

We do not feel that the last sentence of the first paragraph is constitutional nor is it enforceable. County government does not have the right to seize any land. They have only the right of law to insure that noxious weeds are controlled.

The second paragraph of this section is unenforceable and unconstitutional. Cost of control work done on the landowner of one parcel cannot and should not be charged against the owner of another parcel of land, especially in the case of a landowner who is in violation of this act.

Section 16-1716

Delete this entire section. This section is covered in Sections 16-1714 and 16-1715.

Section 16-1717

Delete the underlined sections. Change wording to: The Board of County Commissioners of any county in this state, when creating a noxious weed control fund, may appropriate money from the general fund of the county or levy a tax not to exceed five (5) mills on the dollar of total taxable valuation in such county, the proceeds of which shall be used solely for the purpose of promoting the control of noxious weeds in said county and shall be designated to the noxious weed fund. Other changes as underlined.

Explanation: The present act does not require the county to fund the county noxious weed control program after they have created it. The county commissioners can fund it two ways:

(1) General fund. There is no limit to the amount of money which can be appropriated from the general fund; or

(2) Mill levy. We suggest that the county be allowed to appropriate up to five mills of the total taxable valuation in the county.

Other changes allow this section to read better and removes some of the redundant statements.

Section 16-1718

Delete the underlined words.

Explanation: Deletion of the word "effective" is necessary because the reverse of that statement would mean that the county could not purchase materials for a noxious weed control program. We do not believe that county government should be involved in the commercial sector and as a result, the last sentence of this section should be deleted.

Section 16-1719

Delete the underlined words. Change the wording to read: The supervisors shall control noxious weeds on all county-owned lands within the confines of said county, and the supervisors shall assist all other landowners -- federal, state, and private-- with long-term management plans. The supervisors will insure that these plans are carried out and if violations or refusals to comply

occur shall invoke the full force of this act to insure that control measures are implemented.

Explanation: We believe that the intent of this section should be to remove from the county the right to do commercial work except as outlined in previous sections when dealing with violations of this act. We believe that each landowner should be responsible for his own control work, not the county government.

Section 16-1720

Delete the underlined words. Change the wording to: The supervisors shall fix the cost for control of noxious weeds in the weed district at the going rate for commercial pesticide applicators in the local vicinity. The commissioners and supervisors may agree to assist the landowners in said district with a part of the cost of weed control on their land. If this is done, then in cases where the landowner controls noxious weeds on his own land he shall present a duly itemized claim for up to one-third the total cost. When the same has been approved by the supervisors, it shall be paid to the landowner from the noxious weed fund.

Explanation: Government should not interfere with the ability of private commercial pesticide applicators to compete in the free enterprise system. County governments which do commercial work are in effect destroying the free enterprise system. We believe that the county has no right to conduct commercial contract control programs for noxious weed control. County government should be concerned only with ensuring that an effective long-range program for noxious weed control is conducted in the county.

Section 16-1721

Delete underlined words. No explanation needed.

Section 16-1722

Add to this section the following ideas: The penalty as described is for interference with the supervisors and their employees when they are carrying out their legal duties. We believe that this act needs "administrative penalties" and "civil penalties." Administrative penalties would be assessed by the supervisors under general policy guidelines outlined by the state to insure uniformity. These penalties would range from $100 to $500. Another penalty could be the automatic assessment of 25% of the total cost for control work done by the county on the land of the person in violation of this act. This 25% would be added to the total cost of the control program. Civil penalties would be decided in Court and could range from $500 to $1,500. These penalties would be assessed in the event of a chronic violator of this act.

THE MONTANA WEED LAW

AN ACT ENTITLED: "AN ACT TO DEFINE NOXIOUS WEEDS AND NOXIOUS WEED SEED AND DECLARING THEM A NUISANCE". THE INFORMATION OF NOXIOUS WEED CONTROL DISTRICTS IN EVERY COUNTY, PROVIDING FOR THE MANAGEMENT THEREOF, THE CONTROL OF WORK THEREIN, THE DETERMINATION OF AND LEVYING OF ASSESSMENTS THEREIN: AUTHORIZING A QUARANTINE AGAINST INTRODUCTION OF NOXIOUS WEEDS AND WEED SEED INTO THE STATE OF MONTANA AND INTO ANY COUNTY THEREOF; PROVIDING PENALTIES FOR VIOLATIONS OF THE PROVISIONS OF THIS ACT; AUTHORIZING THE COOPERATION OF THE BOARD OF COUNTY COMMISSIONERS WITH ANY STATE OR FEDERAL AID PROGRAM IN FURTHERING THE OPERATION OF THIS ACT.

(Sections are listed as found in the Revised Codes of Montana 1947 and is written herein to include all the amendments or additions since 1951)

Section 16-1701. NOXIOUS WEEDS DEFINED. The Canadian thistle (cirsium arvense (L) (Scop.), wild morning glory or bindweed (convolvulus arvensis L.) white top (lepidium draba L.), leafy spurge (euphorbia virgata waldst. and kit.), Russian knapweed (centaurea pieris pallas.), and such other weed or weeds as may be defined and designated as a noxious weed by the board of county commissioners of each county, subject to the approval of the county extension agent ~~or~~ agricultural experiment station at Montana state university is hereby declared to be a noxious weed ~~and a common nuisance. Such noxious weeds are hereinafter referred to as "weeds."~~

Section 16-1702. NOXIOUS WEED SEED. The seed of any noxious weed is hereby declared a ~~common~~ nuisance. ~~Such noxious weed seed is hereinafter referred to as "seed" or "seeds."~~

Section 16-1703. Weed control and weed seed extermination districts. The area included within the boundaries of any organized weed control and weed seed extermination district shall hereinafter be referred to as the "district."

Section 16-1704. Weed control and weed seed extermination district supervisors. The three persons appointed by the board of county commissioners to supervise the weed control and weed seed extermination within the county shall be referred to as the "supervisors."

Section 16-1705. The board of county commissioners. The board of county commissioners shall be referred to as the "commissions."

Section 16-1706. ~~Willfully~~ permitting noxious weeds to go to seed unlawful. It shall be unlawful to ~~willfully~~ permit any noxious weed, ~~as~~ named in this act, ~~or~~ designated by the board of county commissioners of the respective county, to go to seed on any lands within ~~the areas of~~ any district. (This section shall apply to all persons, copartnerships, corporation, or companies owning, occupying or controlling lands, easements, or right of ways, as well as all county, state and federal owned and controlled highways, state lands; also all drainage and irrigation ditches, spoil banks, borrow pits and right of ways for canals and laterals within the district.) Include in a definition section.

Section 16-1707. Quarantine against introduction of noxious weed seed and farm products conveying the same. Whenever the supervisors have reason to believe that farm products, including seed, which will cause the spread of noxious weeds, are about to be introduced into the county, the said supervisors shall declare an embargo against the importation of such farm products and seeds into such county.

Reword

Section 16-1708. Embargo against introduction of noxious weed seed from other states. If the department of agriculture believes that movements of grain, plants, seed, tubers, nursery stock, hay, straw, fruit, or other materials containing noxious weed seed or plants dangerous or inimical to the horticultural or agricultural industries are about to be introduced into the state, it may advise the governor. The governor shall, by proclamation, declare an embargo against the importation or shipment of any grain, plants, tubers, nursery stock, seed, hay, straw, fruit, or other materials into the state, except under restrictions established in this act, and provided in the rules adopted by the department of agriculture.

Reword

Section 16-1708.1. Rules for enforcement of interstate embargo. The department of agriculture shall adopt all necessary rules in the enforcement of embargo proclaimed as provided in section 16-1708. The department of agriculture, in adopting the rules, may provide for the establishment of inspection stations, the appointment of inspectors, the establishment of the inspection fees, the issuance of certificates, the methods of transporting and packaging, and other rules and procedures necessary to carry out this act.

Reword

Section 16-1708.2. Violations of interstate embargo - penalty. Any person who refuses to obey an order of an appointed inspector or willfully disobeys the provisions of this act shall be guilty of a misdemeanor and up conviction shall be fined not less than fifty dollars ($50) and not more than five hundred dollars ($500).

Reword

Section 16-1708.3. Dispostion of fines and inspection fees. All fines levied as provided in section 16-1708.2, and all fees collected from inspections shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the department of agriculture for the purpose of administering and enforcing this act.

Section 16-1709.1. Weed control and weed seed extermination districts - formation. A weed control and weed seed extermination district shall be formed in every county of this state and shall include all the land within the boundaries of the county.

Section 16-1710. Notice of hearing. Being Revised.

Section 16-1711. Hearing on petition. Being Revised.

Section 16-1712. Weed control and weed seed extermination districts within corporate limits of cities and towns. Being Revised.

Section 16-1713. Appointment of weed control and weed seed extermination supervisors - term of office - compensation. The board of county commissioners of each county shall appoint a county weed board consisting of three (3) or five (5) members. If a five (5) member board, three (3) members shall be rural agricultural landowners within the county, one (1) from a city or town within the county, and one (1) teachor of biology or person with comparable expertise. If a three (3) member board, two (2) members shall be rural agricultural landowners within the county, and one (1) member shall be a teacher of biology, or person with comparable expertise. They shall be appointed for a period of one (1), two (2), and three (3) years respectively for a three (3) member board or should a five (5) member board be selected, they shall be appointed for one (1) and two (2) year terms respectively dating from the preceding July, and thereafter an appointment or reappointment shall be made annually by the board of county commissioners. The county extension agent in each county shall

be an ex officio member of that county's weed board. Such supervisors shall be public officers, and they shall organize by choosing a chairman and a secretary. The secretary may or may not be a member of the board. Salary, per diem and mileage of such supervisors shall be by resolution of the board of county commissioners. The supervisors may employ suitable and competent persons as assistants and employees as may be necessary and provide for their compensation. It shall be the duties of said supervisors to supervise within their county the control program.

Section 16-1714. Inspection of premises - notice to occupant - possession. Where complaint has been made and the supervisors have reason to believe that noxious weeds ~~described in this act~~ are present upon the lands within the district, ~~in violation of the law,~~ they shall forthwith inspect the premises, and if ~~such~~ weeds are found, they shall cause written notice to be served on the person permitting the same, directing him to comply with the provisions of this act, within a period of time specified in said notice.

Section 16-1715. Destruction of weeds by supervisors if notice not observed - collection of cost. If the notice be not obeyed within the time specified in the notice the supervisors shall forthwith institute control measures and make ~~report thereof~~ to the county clerk, ~~with a verified~~, itemized account of their services, and expenses ~~in so doing~~, and a description of the lands involved, and shall include ~~in said account~~ the necessary cost and expense of chemicals, man hours of labor and equipment employed, at a rate paid, in the immediate vicinity, ~~for labor per day and for equipment used for an eight hour day.~~ Such expenses shall be paid by the county out of the "noxious weed fund", and unless the sum, to be repaid by the owner or occupant is not repaid before October 15th, next ensuing, the county clerk shall certify the amount thereof, with the description of the premises to be charged, and shall extend the same to the assessment list of the said county, as a special tax on said land, but if the land for any reason be exempt from general taxation, the amount of such charge may be recovered by direct claim against the lessee and collected in the same manner as personal taxes. When such taxes are collected, they shall be credited to the "noxious weed fund." It shall be the duty of the state board of land commissioners in leasing any agricultural state land to provide in such lease, that the lessee of lands so leased lying within the boundaries of any noxious weed control and weed seed extermination district shall assume and pay all assessments and taxes levied by the board of county commissioners for such district on such state lands, and such assessments and tax levy shall be imposed on such lessee as a personal property tax and shall be collected by the county treasurer in the same manner as regular personal property taxes are collected. All such state lessees shall be required under the terms of such lease to pay such assessment and tax levy at the same time and manner as other regular personal taxes are paid. ~~In effectively controlling such weeds, the supervisors are authorized to take possession and control of any infested tract of land, within their districts, together with any fences or ditches thereon, and to move any fence or ditch where necessary in order to better conduct the control work. If any fence or ditch be moved, the same shall be replaced upon completion of the control work, if requested by the landowner.~~

~~In determining what lands shall be included as land covered by the special tax herein and which shall be described in the said certificate of the county clerk, it shall be presumed that all work done upon any of the land of any one landowner shall be for the benefit of all of the land within the district, and, at the time such work was done, belonging to such owner which was contiguous to or joining the piece or parcel upon which such work was done, together with~~

~~the piece or parcel upon which such work was so done, and the amount so certified shall so become a tax upon the whole thereof.~~

Section 16-1716. ~~Destruction of weeds mingled with crop. When in the opinion of the supervisors noxious weeds are intermixed with a growing crop within the district, so that the field is a menace to the district, the supervisors shall have power to order the destruction of the same or such parts thereof as may be necessary. The supervisors may go upon the land infested with the noxious weeds for any purpose necessary to such enforcement, provided, however, that it shall be the duty of the supervisors to confer with commissioners as a board of arbitration, who, when they deem it proper, may extend for one year the order for destruction of the crop containing the noxious weeds.~~

Section 16-1717. Creation of noxious weed fund by county commissioners - expenditure thereof. The board of county commissioners of any county in this state ~~may~~ create a noxious weed control and ~~weed seed extermination fund, either by appropriating~~ money from the general fund of the county, or ~~at any time fixed by law for levy and assessment of taxes~~, levy a tax not exceeding ~~two (2)~~ mills on the dollar of total taxable valuation in such county, the proceeds of which shall be used solely for the purpose of promoting the control of noxious weeds ~~or extermination of weed seed~~ in said county and shall be designated to "noxious weed fund" ~~and~~ any proceeds from work or chemical sales shall revert to the noxious weed fund and shall be available for reuse within the fiscal year. This fund shall be kept separate and distinct by the county treasurer, and shall be expended by the commissioners at such time, ~~and such manner~~, as is by said supervisors deemed best to secure the control ~~and extermination~~ of noxious weeds and weed seed. Warrants upon such fund shall be drawn by the supervisors, ~~provided that no warrants shall be drawn except upon claims duly itemized by the claimant, except payroll claims which shall be itemized and certified by the supervisors, each such claim shall be presented to board of county commissioners for its approval before the warrant therefor shall be countersigned by the commissioners.~~

Section 16-1718. The supervisors shall have authority to purchase such chemical, material, and equipment as they determine necessary for carrying on an effective control program. Such materials shall be paid for out of the "noxious weed fund." ~~The supervisors shall also determine what chemical, material, or equipment which they may have on hand, shall be made available for distribution to landowners who may wish to control weeds on their own land. The cost for same shall be charged against the said landowner and his land, and collected for as is provided for in this act.~~

Section 16-1719. County supervisors to control weeds and to exterminate weed seed in the district. The supervisors shall control noxious weeds on all lands within the confines of the district. They shall take particular precautions to control the noxious weeds while preserving beneficial vegetation and wildlife habitat. Where at all possible methods for such control shall include mowing, chemical and biological methods. ~~The total cost of such control shall be paid from the "noxious weed fund." Provided that the cost of controlling such weeds growing along the right of way of a state or federal highway shall upon the presentation by the supervisors of a verified account of the expenses incurred, be paid from the state highway fund. Costs attributed to other lands within the district shall be assessed and collected from the appropriate holder or owner of interest as set forth in section 16-1705.~~

Section 16-1720. ~~Commissioners shall determine~~ cost of control and extermination of noxious weed seed and fix the amount to be paid from the noxious weed fund. The ~~commissioners~~ shall ~~determine and~~ fix the cost ~~of the~~ control of noxious weeds ~~and of extermination of noxious weed seed in~~ weed districts ~~whether the same be performed by the individual landowners or by the supervisors. If in the judgment of~~ the commissioners and supervisors ~~it seems advisable they may~~ agree to assist the landowners in said district with a part of the cost of weed control on their land. If this is to be done then in cases where ~~where the~~ landowner controls the weeds and ~~exterminates the weed seed~~ he shall present to the supervisors a ~~duly verified claim~~ for one-third of such cost, and when the same has been approved by the supervisors ~~and commissioners~~ it shall be paid to such landowner ~~out of the~~ "noxious weed fund." ~~When the supervisors do the control and extermination provided for herein weed districts, one third of the cost thereof shall be paid out of the "noxious weed fund," and the remaining two thirds shall be charged against the land upon which weed control and weed seed extermination was had, and such two thirds shall be repaid or collected in the manner hereinbefore provided for.~~

Section 16-1721. Co-operation with other programs. The supervisors are empowered to co-operate with any state or federal aid program that becomes available. ~~Under such a plan of co-operation the direction of the program shall be under the direct supervision of the supervisors of the county in which the program operates.~~

Section 16-1722. Penalty for violation of act. Any person who in any manner interferes with the ~~weed control commissioners,~~ weed supervisor or his deputies and employees in carrying out the provisions of this act, or refuses to obey an order of the supervisors, shall be guilty of a misdemeanor and upon conviction thereof, he shall be fined not to exceed a sum of one hundred dollars ($100). All fines, bonds and penalties collected under the provisions of this act shall be paid to the county treasurer of each county, and by him placed to the credit of the fund to be known as the "noxious weed fund."

Section 16-1723. Dissolution of weed control and weed seed extermination district. Being revised.

Noxious Plant Management Advisory Council

Minutes of the Meeting April 21 - 22, 1976

Advisory Council Members present on April 21:

Dale Benge, Chairman

Don Baldridge

Larry Erpelding

Tom Burns

Gilman Mirehouse

Don Gruel

John Weigand

Ole Ueland

Mike Jackson

Jack Iman

Members Absent:

Gene Walker

Clifford Stoltz

Other Individuals in Attendance:

Dave Armstrong

Roy Bjornson

Gary Gingery

Noel Rosetta, Environmental Information Center, Audubon Society, Montana Nurserymen's Association

Lyle Ralston, B.L.M., Federal Courthouse, Billings, Mt

Carol Ferguson, State Commission on Local Government

Gerald Blaine, Burlington Northern Railroad

Charles Chambers, Milwaukee Railroad, Box 570, Deer Lodge, Mt 59722

Carol Larson and Steve McGrath, Silver Bow County Weed District

Doug Johnson, Consolidated Pest Control Program, Cascade County

Additional individuals present on April 22:

Vonley Cox, Great Falls - Cascade County Weed Board

George McCafferty, Belt - Cascade County Weed Board

Nancy Hayne, Intern, State Commisson on Local Government

Chairman Dale Benge opened the meeting at 8:30 a.m. and asked for any old business. Gary Gingery reported on the actions of the Old West Regional Commission. The Commission has turned down the proposals for weed control programs from Wyoming and Montana but stated that the commission would assist these states in finding other funding sources. The proposal to the commission concerning remote sensing of noxious weeds is still pending. The proposal was returned to an advisory council for revision and will be submitted to the full commission at a later date.

Ole Ueland asked for more information on the Carlson Bill, especially in terms of funding. At the direction of the Council, the Department will attempt to obtain more information on the Carlson Bill as it relates to federal weed control programs.

Dave Armstrong presented the tax levy information as requested by the Council in their previous meeting. The Council discussed this report. Mike Jackson indicated that while this presented the exact tax levy for weed control per county, because of revolving funds involved, the inventory does not actually reflect the true budgets for each county. Mike Jackson felt that county weed districts would get more monies by requesting an annual meeting with the county commissioners to present up-dated information on the weed problem in their county, its cost, and how they propose to manage it. Many counties do not have this information available now and find it difficult to obtain the necessary funding from the county commissioners. The Council discussed the subject of funding at some length.

Chairman Dale Benge asked for any additional old business. There was none so the chairman requested that any new business now be covered. One item of business was the Noxious Weed Act of 1947 which had been redrafted by Dave Armstrong. The council decided to review the proposed draft, line by line.

The following is a summation of the changes and some comments by council members: The title of the Act has been changed to the "Noxious Plant Management Act". In Section 16-1701 of the draft copy the first sentence was changed to read "noxious plants are a problem requiring intensive long term management". The word "increasing", indicating an increasing problem by weeds, was eliminated. John Weigand questioned, if the weed problem is increasing and if so where are the studies to back up this statement. Mike Jackson responded by asking what the standards are for an infestation. He indicated that there are individual weed species that are increasing and causing problems, an example of which is Canadian thistle. Although this species is not increasing in crop areas it is increasing in range areas. He also indicated that common tansy is increasing in several sections of the state. John Weigand said that a general statment that weeds are an increasing problem cannot be supported by any studies or by any Wildlife Management techniques. Ole Ueland suggested that the appropriate wording in the sentence be changed to "economic and social problem requiring intensive control". Jack Iman stated it is not only as agricultural problem, but a social problem. Carol Larson, Silver Bow County, said that their Commissioners failed to see the value of a full time program. Larry Erpelding suggested that the sentence be changed to read "noxious plants create serious economic problems requiring intensive long term management". It was decided by the council that the sentence should be changed to read as stated above. The council then considered the definitions in sections 16-1702 and it was suggested that any time in the Act where the word "control" was used that the word "manage or management" be substituted. The first definition "district", other than changing the word from "control to management" was accepted. The second definition, "land", was discussed and it was decided that a rewrite was necessary. The council directed Dave Armstrong and Gary Gingery return the next day with a rewrite of of that particular definition. The definition will now read "land means all

land and water areas including, but not limited, to structures of building, contrivances and machinery pertinent thereto or situated thereon, fixed or mobile including any used for harvest or transportation which are owned, controlled, leased or occupied by any person," The council returned to the first definition of "district" with some concern that counties or the districts would have too much control and would not follow other state, federal and local laws. The council requested that a statement be placed in the Act, in an appropriate section, stating that they must comply with all county, state and federal laws that are applicable to their operations. It was decided that such a statment would go into 16-1704. Dave Armstrong and Gary Gingery were requested to write this statement for consideration of the council the following day. Definition No. 3 which was "noxious plant" was modified and now will read "noxious plant means any weed plant capable of becoming established in a suitable habitat, either by seed, root part or modified stem; which is extremely resistent to mechanical, biological chemical control or any combination of control techniques; which may render land unfit for use; which may be damaging to livestock and wildlife or, which may be injurious to humans."

The 4th definition "noxious plant seed" was accepted. The next definition "person", No. 5, was accepted. Definition of "pest" was eliminated, No. 6, the definition of "supervisor" and No. 7 the definition of "weed" were accepted by the council. The council discussed a definition for "board" meaning the noxious plant management board but it was decided that since within the text the name of the board was spelled out in total, a definition would not be necessary. Several members asked if a definition of "management" should be included within the definition section. This was discussed and it was found to be very difficult to write a meaningful definition. The council decided to look at the rest of the draft to see if it adequately explained management objectives and goals.

Section 16-1703 was modified to read, "If after due notice, as set forth

in Section 16-1707, and/or an opportunity for a person to enter into a contractual agreement with the county for management and noxious weeds, the person refuses to manage", etc. Subpart 2 has also been modified by the elimination of "and a common nuisance" and the addition of dalmation toadflax and its scientific name Linaria dalmatica in 16-1703, Sub. 2.

16-1704 was modified. A new subpart 2 has been inserted which reads "the county shall comply with all applicable county, state and federal laws and regulations in performing the noxious plant management program." Council members should note that later in the meeting this Sub 2 was modified additionally and therefore should refer to the final version in the revised draft.

Additional changes in 16-1704 include under Sub 3, the word "damage" was changed to "change". In Sub 4 the terminology "owners - leasees" was modified and now includes "or permitees" and it was decided by the council that throughout the draft copy of the Act, that any time owners, leasees are mentioned that the term "or permitees" should be included in the statement.

In Section 16-1705, "appointment of the board" - Tom Burns stated he was against the limitation of two consecutive terms. He felt that a board member should be able to serve as was set forth in Sub 2. The council decided that Sub 2 should read as follows: "appointment or reappointment shall be made every January." The council struck the following words, "provided that no member shall serve more than two consecutive terms". The council then directed Dave Armstrong and Gary Gingery to write a permissive statement allowing the county commissioners to determine the number of terms that a board member may serve. Under Sub 4 the council decided that the term "may" should be changed to "shall". In this way the board members will know what their salary, per diem and mileage will be.

Under Section 16-1706 "inspection" was modified by the addition of "and policies of the board" in the last sentence, following "the long term provisions of this act." The council also decided that it should be "a

reasonable period of time." Subpart 2 was accepted as written in the draft.

Larry Erpelding felt it would be good for the draft to have a section which sets forth the administrative procedures that can be utilized by not only the county involved, but by citizens who wished to make complaints, petition the board or appeal the board's proposed and actual decisions. The council went on record stating that the Department of Agriculture should write a section on this and present it to the council the morning of April 22. Members should take note that this has now been added as Section 16-1708 and the old sections 16-1708 through 1712 have been increased by 1. In other words, in the draft 1708 is 1709.

In 16-1707 the title "management" has been changed to read "enforcement". In addition Sub 1 has been modified with some minor language changes which are reflected in the current draft. Instead of calling the twenty-five percent charge added onto the regular bill a "fee" it will be called a "penalty". Other changes are reflected in the draft. The council adjourned for lunch.

Dave Wanzenried, Deputy Director of the State Commission on Local Government, presented to the council the following information on revision of local government laws:

The 1974 legislature created the State Commission on Local Government. The commission has two primary responsibilities, 1.) to provide assistance to local study commissions and other governmental bodies on finding alternative forms of local government. 2.) The revision of all local government laws. Dave named the members that served on the commission. He stated that the commission has been working for two years on helping local governments in revising state codes. The local commissions primary goal is to prepare an alternative form of local government. The state commission has been studying what grants of power should be made to the local level. The new constitution set forth two primary areas which affected this process, the first one deals with the grant of legislative power to counties. (It should be remembered that cities already have legislative

powers). The procedures for granting these powers to counties has to be determined. The second was granting local government powers home rule. Any powers not addressed by state law would not be denied. Procedures used in the recodifying and redrafting the laws will be a repeal of all local laws and then the redrafting of these laws to be presented to legislature as a new package. There will be public hearings on these subjects May 25 in Butte, May 26 in Great Falls, May 27 in Missoula, June 2 in Billings, June 3 in Miles City and June 8 in Wolf Point. Times and places of these meetings will be advertised in the local newspapers. In the afternoon there will be an open meeting in which anyone in attendance can find out what the commission has done and what its proposes to do. In the evening there will be a public hearing during which testimony will be taken. Dave Wanzenried emphasized that everything presented or completed at this time is a staff proposal and does not reflect the will of the Commission itself. Each member of the council has received copies of the materials that Dave Wanzenried presented. Following Dave's presentation the council members discussed various aspects of the state commission on local governments and their functions. Following this discussion the council returned to the discussion of the draft proposal of the Noxious Plant Management Act.

Section 16-1709 (was 16-1708) was modified in several sections. The last sentence of Subsection 2 was modified to read "noxious plant management fund" instead of "general fund". In Subsection 4 minor changes were made, including changing "general fund" to "noxious plant management fund" with the understanding that these monies can only be spent for noxious plant management. In Sub 5 there was an addition following "highway-rights-of-way" which reads "in accordance with the county wide management plan". Section 16-1710 (was 1709) the council made several adjustments in 16-1710, parts 1 and 2, and it should be noted that the following day the council made additional revisions. The final revision of section 16-1710 is reflected in the new draft. In

Section 16-1711 (originally 1710), some minor changes were made which included changing "landowner-leasee-permittee" to include any "person". Appropriate changes are included in the new draft. In Section 16-1712 (was 1711) it was recommended that "embargo quarantine" should also encompass machinery and equipment. Section 16-1713 (was 1712) Violation and Penalty was discussed and will be left as originally written.

The council, after discussing the draft directed the Department of Agriculture to return with the necessary revisions the following morning. The council adjourned until 8:30 a.m., April 22.

Dale Benge opened the meeting April 22 at 8:30 a.m. and asked the Department of Agriculture for the requested revisions. These revisions were provided to each council member in attendance. The revisions as approved by the council are written into the new draft.

Section 16-1704 was modified. The council approved the modification with one addition, that the first sentence read "the county should comply with all applicable county, state and federal laws, and regulations in performing the noxious plant management program." The additional sentence would then read "the county shall take special precautions when using and applying pesticides for noxious plant control". A new Section 16-1708 was added and covers such items as complaints, petitions, Administrative Appeals, and Judicial Review. The council approved this addition and it is inserted in the draft of the new Act.

The redraft of Section 16-1709 "Declaration of Noxious Plants" was also presented to the council who made several changes which are reflected in the new draft of the Act. The council approved the following sentence in Sub Part 2; "if both the Cooperative Extension Service and Agricultural Experiment Station agree the Board of County Commissioners may add or delete the plant or plants to or from the county's noxious management list." The remaining sentence after Sub Part 2 as originally proposed has been removed and is now included in

Sub Part 3 and is in the revised draft.

The council also approved the revised draft of the definition of "land" which is in the newly revised copy.

Following additional discussions of the draft by the advisory council the council directed the department to redraft the act with all the revisions the council desired for their consideration during the next meeting.

Carol Ferguson from the State Commission on Local Government was then requested to present her suggested changes in the Weed Act, which includes revision of all local pest acts including weeds, mosquitoes, predators and other vectors. The council reviewed these two drafts, "Agricultural and Other Pests" and "Noxious Weeds" presented by Carol Ferguson. The council made several revisions. Items that the council had already approved for their draft were recommended for the state commission on local government's proposal.

Following are some of the more important items that the council decided regarding the draft Carol Ferguson presented. Other items are reflected in the council's draft, enclosed with the minutes of this meeting. The council felt that throughout both proposed drafts the term "noxious plant" should be utilized instead of "noxious weed". In addition to naming the original five noxious weeds that are now declared by the present weed law, an additional seven noxious plants should be included. Following are these noxious plants:

Carduus nutans - Musk thistle

Halogeton glomeratus - Halogeton

Hypericum perforatum - St. John's wort

Linaria dalmatica - Dalmation toadflax

Linaria vulgaris - Common toadflax

Sonchus arvensis - Sow-thistle

Tanacetum officinale - Common tansy

The council also felt very strongly that it should be mandated that a weed

board be required in the county. This board cound be joined with other pest control boards if necessary. Following discussion of these two drafts the council directed the Department of Agriculture to prepare a letter for the Chairman's signature to the State Commission on Local Government on behalf of the council for their suggested changes of the revision of the Weed Act and Pest Act. These revisions are to be considered only as interim suggestions and not final suggestions. The Council reserved the right to make additional recommendations. This was approved unanimously.

Larry Erpelding then asked the question concerning the wording "and a common nuisance". After discussion it was decided that the attorneys with the Local Government Study Commission would be questioned about the need for this statement. The Department of Agriculture and Carol Ferguson will have this information for the council at the next meeting.

Doug Johnson then presented information on a pilot project on the Smith River involving citizens, producers, Forest Service and other local and state agencies. They are attempting to inventory the leafy spurge infestation on the Smith River to find a method of taking care of this problem. They wanted the council to endorse their project. The council has gone on record endorsing the concept of the study and requested that the Department of Agriculture prepare a letter for the Chairman's signature expressing the Council's endorsement.

George McCafferty and Vonley Cox from Cascade County presented information on the leafy spurge problem in the Smith River area. They reported that there are some extreme infestations and some lands have already been lost because of the tremendous infestations and felt that was time something was done to take care of this problem. It was recommended by Gary Gingery that this organization try to obtain funds from the Old West Regional Commission and that they make application through the Montana Agricultural Experiment Station. It was suggested that the Department of Agriculture provide assistance to Cascade

County in making application for these funds.

Mike Jackson talked about mapping procedures that the counties have used and the mapping problems that have been experienced by the various counties. Mike Jackson stated that he would bring this procedure to the next meeting for the councils review and comments. Mike Jackson then talked about training the commercial and private applicators for certification and he asked the council if they had any suggestions.

Dave Armstrong pointed out that what the Council had discussed during this session was not all that should be included in a new Management proposal. The law should define the duties and responsibilities of local government, the board, the supervisor, the Department of Agriculture and others. The council directed Dave Armstrong and Mike Jackson to work together and draft a proposal of the duties and responsibilities to be included with the revision of the draft.

The council decided the next meeting would be held June 24 and 25, starting at 8:30 a.m. in Helena, Montana. The meeting was then adjourned.

Minutes of the

NOXIOUS PLANT MANAGEMENT ADVISORY COUNCIL MEETING

June 24-25, 1976

MEMBERS IN ATTENDANCE: Dale Benge, Larry Erpelding, Don Baldridge, Clifford Stoltz, Mike Jackson, Don Gruel, Gilman Mirehouse, Ole Ueland, Tom Burns, Jack Iman.

OTHERS ATTENDING: Noel Rosetta, Carol Ferguson, Gerald Bohne, Gary Gingery, David Armstrong, Jo Ann Wunderlich; Al Thelen, Arlene Loble, and Dan Meisner June 24 morning session only.

The meeting was called to order at 8:30 A.M. by Chairman Dale Benge. Each person was asked to give his name and identify his affiliation.

Dave Armstrong was asked to read the minutes of the last meeting. The minutes stood approved as read.

Draft copies of the proposed Noxious Plant Management Act were distributed to those in attendance.

General discussion began with Dan Meisner from the League of Cities and Towns expressing concern over the Language in previous drafts regarding cities and counties. City Manager Al Thelen suggested that the Council amend the Noxious Plant Management Act and requested that the Commission on Local Government also include the paragraph that cities should have the right to opt out of a county program. Cities would rather decide how to handle their own weed problems.

He stressed that cities are not mainly concerned with pulling out of such a program entirely, but felt weed control in cities and counties are two separate programs with two different sets of objectives. Counties don't gear their program to the municipal control of weeds. The option to opt out would only be granted to those cities and towns adhearing to the law. Question was raised as to whether cities could get money from such a program as most cities already have some type of nuisance weed control program. Jack Iman proposed that the state set up a weed control program with a specific set of rules so that cities not participating in a county program will still have to control noxious weeds in accordance with the law.

At this point, Carol Ferguson passed out a draft proposal that would incorporate ideas with the Department of Agriculture, League of Cities and Towns, and State Commission on Local Government. Gary Gingery suggested that the draft submitted by Ms. Ferguson be amended to include the rights of counties to declare noxious weeds.

Lengthy discussion about a five mill levy began. A suggestion was made to include a time table each year so that respective parties could set up their programs. Ms. Ferguson pointed out that with the proposed codes, cities and counties would have a similar system. No specific mill levy would be assigned to a particular program, but the weed supervisor would be responsible for this mandated function as a public servant.

Dave Armstrong began a discussion about the Carlson-Foley Act of 1968. This act provides the mechanics for the federal government to appropriate monies to agriculture for the control of noxious weeds on federal lands provided that the state (1) has a statewide weed control program, and (2) has a statewide Environmental Impact Statement for the

control of noxious weeds. Congress will make a specific appropriation to the state for the control of noxious weeds on federal lands. Monies are appropriated to state agencies for direct control of a state program. If the Montana Department of Agriculture had a weed unit and adopted standards of operations, goals, and objectives, the state may be able to obtain federal monies for counties provided that counties meet certain objectives. Counties would actually perform operations, but the state would provide the standards and funding. Dave continued to explain that Congressman John Melcher would be sending more information regarding the guidelines of the Carlson-Foley Act but that they had not been received prior to the meeting. Federal financial support will require state legislation to meet the standards and provisions of this act to become eligible for receiving these funds. To date, only Wyoming and Oregon have been granted this federal appropriation. It was also suggested that perhaps the State of Montana could request an amendment to the Carlson-Foley Act so that counties could bypass a state agency and receive weed control funds directly.

Carol Ferguson suggested that counties appoint a board of administrative body to oversee functions of the pest management program. This administrative body would be responsible for making and carrying out policies and approving the program. A suggestion was made to hire a full-time weed specialist assigned to a state agency to carry out the policies and provisions of the federal laws and keep county weed districts informed of progress in these areas. This specialist would be responsible for keeping up with new developments and technology and assist the boards. If feasible, he would be available to districts and counties on a priority basis. This weed specialist would not duplicate the educational services

of the Cooperative Extension, but would offer specialized and technical services. The Council recommended that this matter be pursued further upon receipt of Melcher's report.

Under old business, Dave Armstrong reported that the application for a grant to study weeds by the use of false color infrared photography had been turned down by the Old West Regional Commission. In its place, however, the Department of Agriculture is currently attempting to obtain a small grant from EPA for a pilot project. The Department of Community Affairs is investigating the possibilites of using aerial photography to map the entire state.

The morning session of the meeting was adjourned at 11:45 A.M.

The afternoon session was delayed because of a bomb threat, and the meeting was finally called to order at 1:45 P.M. Discussion by section began on the revised proposed draft of the Noxious Plant Management Act.

Section 16-1701: Motion passed to adopt this section as proposed.

Section 16-1702: (3) Line 5, second clause; insert after the word "use" the words "... or limit its economic potential;"

(4) Line 1, delete the word "viable" between the words "the" and "fruit."

Motion passed to approve this section as amended.

Section 16-1703: (2) It was reported that an opinion from the Attorney General on the term "common nuisance" would not be legally acceptable because of certain statutes regarding the nature of this word. He recommended that these words be replaced with the words "public nuisance." The Council supported this recommendation, and the words "public nuisance" replaced the words "common nuisance" on Line 2.

Motion passed to approve this section as amended.

Section 16-1704: (2) Line 3, insert the word "plant" between the words "noxious" and "management."

(3) Line 5, replace the word "biennially" with the word "periodically."

(7) Line 2, delete the words "to be revised periodically"; Line 4, delete the words "and federal" between the words "state" and "highway."

Motion passed to approve this section as amended.

Section 16-1705: (1) (a) Lines 4 and 5; change the remainder of the sentence after the word "one- (1)," to read: " ... two- (2), and three- (3) year terms respectively."

After considerable discussion on the remaining subsections, motion passed to approve section as amended.

Section 16-1706: (1) Line 5; replace the word "he" with the words "Noxious Plant Management Board."

After much discussion regarding the term "person" and the definition of the term "notice," it was suggested by the Council that Gary Gingery get an opinion from the Attorney General for the term "person." This section was partially approved as amended, pending the Attorney General opinion.

Section 16-1707: (1) Line 4; replace the words "pesticide applications" with the words "management operations"; Line 2, Page 7; insert the word "legal" after the word "the" at the end of the sentence. Proposals for new subsections (2) and (3) regarding tax exempt lands and fees were introduced at this time (see new draft). Subsections (2) and (3) of the proposed draft were subsequently changed to (4) and (5).

(4) Line 4; insert the word "noxious" between the words "any" and "plant."

Motion passed to adopt section and new subsections as amended.

Section 16-1708: Motion passed to adopt section as proposed.

Section 16-1709: Section tabled until Friday session.

The meeting was adjourned at 4:45 P.M.

June 25, 1976

The meeting was called to order at 8:15 A.M. by Chairman Dale Benge.

The meeting began with Dave Armstrong giving a short slide presentation on false color infrared photography (the proposed pilot weed control project that the Department of Agriculture requested a small EPA grant) to conduct weed survey work.

After a brief discussion of the slides, discussion continued on the proposed draft of the Noxious Plant Management Act.

Section 16-1709: (5) Lines 2 and 6; delete the words "and federal" between the words "state" and "highway."

(6) The Council recommended to adopt this new subsection.

Motion passed to adopt section and new subsection as amended.

Section 16-1710: (1) Line 2, insert the word "Directors" before the word "Cooperative ..."

(2) Line 1; insert the word "Directors" after the word "the"; Line 3; insert the word "Directors" after the word "both" and delete the words " ... the Cooperative Extension Service and the Agricultural Experiment Station ... "

Motion passed to adopt section as amended.

Section 16-1711: (1) Line 4, replace the word "landowner" with the word "persons"; Line 5; replace the word "landowner" with the word "persons"; after the word "county" insert the words " ... as set forth in the management plan of the county."

Motion passed to adopt section as amended.

Section 16-1712: (1) This section was amended to read: "The Department of Agriculture shall adopt model rules and regulations which counties or Noxious Plant Management Boards may adopt and enforce for implementing a quarantine for farm products, machinery, and equipment containing noxious plants, plant parts, and seed to be transported within and into the county provided that the county rules and regulations meet minimum Department of Agriculture standards. Counties may adopt rules and regulations more stringent than these model rules and regulations.

(2) Line 6, replace the word "governor" with the words "Director of Agriculture" in both the first and second sentences.

(3) Amend the first sentence to read: "The Department of Agriculture may promulgate and adopt all necessary rules for the enforcement and management of embargoes prior to their proclamation."

Motion passed to adopt section as amended.

Section 16-1713: Motion passed to adopt section as proposed.

Section 16-1714: (1) Line 2, replace the word "shall" with the word "should."

Motion passed to adopt section as amended.

Section 16-1715: (1) Delete the first sentence and replace with: "The Noxious Plant Management Board shall:"

(d) Line 1, replace the word "control" with the word "management"

(f) Line 2, replace the word "control" with the word "management"

(j) Line 1, insert the words " ... Cooperative Extension Service ..." at the end of the line.

(k) Insert 16-1717 (g), as amended, to read: "Delineate areas in the county where some management techniques may not be carried out because of unique environmental and economic considerations."

Motion passed to adopt section as amended.

Section 16-1716: (1) (b) Line 2, insert the word "municipal" between the words "county" and "and" at the end of the line.

(h) Insert the words "Manage and ... " at the beginning of the line.

(i) Delete this entire subsection and change proposed subsections (j), (k), and (l) to (i), (j), and (k) respectively.

Motion passed to adopt section as amended.

Section 16-1717: (1) Amend the first sentence to read: "The Department of Agriculture and Cooperative Extension Service in cooperation with the counties shall:"

(g) Line 2, replace the word "cannot" with the words "may not"; insert the word "and" at the end of the line; Line 3, delete the words "or geographical" between the words "economic" and "considerations."

Motion passed to adopt section as amended.

The meeting was adjourned at 12:00 for lunch.

The afternoon session of the meeting began with a review and discussion of a draft proposal from Carol Ferguson on Noxious Plants to be used under the new coding system.

After this discussion, a suggestion was made for the Council to prepare specific recommendations for legislation to the Governor in its final report. Among the items asked for consideration were:

1. The Department of Agriculture would take the final proposal to weed districts and executive committees of the various agricultural commodity groups prior to legislation.

2. The Council may want to take some sort of position on the Noxious Plant Management proposal from the State Commission on Local Government.

3. Investigate and establish specific criteria for financing of county programs and explore alternative funding possibilities.

4. Recommend that a position be made within some state agency for a Weed Specialist or Coordinator exclusively for the administration of the Noxious Plant Management Programs.

5. Establish what type of supervisor should be hired for the weed districts.

6. Hire summer employees for the first and/or second years of the programs to assist counties with the implementation of their programs.

7. Monies for infrared photography to help define weed infestations.

8. New infestations. Perhaps develop new legislation for appropriation of monies for this special purpose and transfer to next year if no new infestations occur.

9. Explore the possibility of obtaining monies for weed control under the provisions of the Carlson-Foley Act.

10. Attempt to modify or amend the Carlson-Foley Act so that counties may bypass state agencies and receive direct appropriations from the federal government for their weed control on federal lands.

11. Solicit support from other agricultural commodity groups to promote legislation of the Noxious Plant Management Act and subsequent Noxious Plant Management Programs.

As the meeting was running late, it was agreed by the Council members that Gary Gingery and Dave Armstrong would meet with Chairman Dale Benge and Vice Chairman Don Baldridge at a later date to discuss these suggestions, take into consideration any other suggestions or recommendations made by the Council members, and render some sort of decision on developing a weed plan to propose to legislature.

The meeting was adjourned at 4:00 P.M.

Respectfully submitted,

Jo Ann Wunderlich

Jo Ann Wunderlich
Recording Secretary

THE MONTANA NOXIOUS PLANT MANAGEMENT ACT

16-1701 Policy and Purpose. Noxious plants are an economic problem requiring intensive, long-term management. The management of noxious plants is primarily the responsibility of landowners. When infestations of noxious plants are of an unusual nature, proportion, or intensity, the cooperation and resources of individuals, communities, and governmental entities may be desirable to manage infestations. Therefore, every county shall develop and implement immediate and long-range noxious plant management programs throughout the county. The county shall take particular precautions while planning and implementing this program to protect and preserve the environment.

16-1702 Definitions.

(1) District means all the lands within the confines of any county established to manage noxious plants.

(2) Land means all land and water area, including but not limited to structures, buildings, contrivances, and machinery appurtinent thereto or situated thereon, fixed or mobile, including any used for harvest or transportation which are owned, controlled, leased, or occupied by any person.

(3) Noxious plant means any weed plant capable of becoming established in a suitable habitat either by seed, root part, or modified stem; which is extremely resistant to mechanical, biological, or chemical control; which may render land unfit for use; which may be damaging to livestock or wildlife; or which may be injurious to humans.

(4) Noxious plant seed means the fruit of any noxious plant.

(5) Owner/Occupier means any person or public agency which owns, leases, occupies, controls, or manages any land within the county and within the boundaries of the district.

(6) Supervisor means the person employed by the county to conduct a noxious plant management program.

(7) Weed means any living plant which by its presence reduces land use for man's benefits.

16-1703 Prohibitive Statement. (1) It shall be unlawful for any owner/occupier after due notice and/or opportunity to enter into a contractual agreement with the county for the management of noxious plants as provided in Section 16-1706, to willfully allow any noxious plant named in this act or designated by the county to self-propogate by root part, modified stem, or go to seed on any lands owned, controlled, or leased by him in any county. The management of noxious plants is the responsibility of all owners, or occupiers of land.

(2) The following plants, their parts, and their seed are hereby declared noxious: *Cardaria draba* (Whitetop); *Carduus nutans* (Musk thistle); *Centaurea repens* (Russian knapweed); *Circium arvense* (Canadian thistle); *Convolvulus arvensis* (Field bindweed); *Euphorbia esula* (leafy spurge); *Halogeton glomeratus* (Halogeton); *Hypericum perforatum* (St. John's-wort); *Linaria dalmatica* (Dalmation toadflax); *Linaria vulgaris* (common toadflax); *Sonchus arvensis* (perennial sowthistle); *Tanacetum vulgare* (common tansy).

16-1704 Creation. (1) A noxious plant management district shall be formed in every county of this state.

(2) The county shall comply with all applicable county, state, and federal laws and regulations in performing the noxious plant management program, especially when applying pesticides.

(3) Each county shall plan, develop, and implement a noxious plant management program for immediate and long-range noxious plant management on all lands within the county. Long-term programs shall not be less than five years in duration and shall be updated periodically to apply new management priorities or to reflect change in local ownership and control of the lands involved.

(4) A county creating or developing a noxious plant management program shall first prepare a plan as a basis for the management program. The plan shall include:

(a) A statement addressing the objectives and goals of the program.

(b) The specific plant specie(s) to be controlled.

(c) The apparent intensity and boundaries of the population(s).

(d) The actual and probable hazard or damage caused by the noxious plant population.

(e) The proposed methods of control, including alternatives, if any.

(f) The probable effect of control methods on the plant(s) to be controlled and on other non-target plant and animal life in the area.

(g) The estimated costs of the proposed program and how they may be apportioned.

(h) The specific priorities of the program element in the total plan.

(i) Any other relevant information.

(5) A county shall allow a sufficient period of time for public comment on the plan before implementing the management program.

(6) A county may develop and carry out its noxious plant management program in cooperation with one or more counties or with state or federal governments and their agencies as well as with any person within the district.

(7) The county and the Department of Highways shall enter into an agreement specifying their mutual responsibilities with respect to the management of noxious plants by the county on state highway rights-of-way.

16-1705 Appointment of the Board. (1) The governing body of the county shall appoint a Noxious Plant Management Board. The Board may consist of three (3) or five (5) members.

(a) If a three- (3) member board is appointed, then two (2) members shall be rural agricultural persons in the county and one member shall be a teacher of biology or person of similar expertise. The members shall be appointed to one- (1), two- (2), and three- (3) year terms respectively.

(b) If a five- (5) member board is appointed, then three (3) members shall be rural agricultural persons, one (1) shall be from an included municipality, and one (1) shall be a teacher of biology or person of similar expertise. The members shall be appointed for one- (1), two- (2), and three- (3) year terms respectively.

(2) Appointment of reappointment to the Noxious Plant Management Board shall be made each January. The governing body of the county may limit the number of terms each member may serve.

(3) The County Extension Agent shall be an ex officio members of the Board. The Board may appoint other ex officio members if necessary.

(4) The governing body of the county shall, by resolution, set the salary, per diem, and mileage paid to the Noxious Plant Management Board.

(5) The Noxious Plant Management Board shall establish the policies for the management of the district and hire suitable and competent persons to conduct the management program in the county.

16-1706 Inspection. (1) Where complaint has been made or the supervisor has reason to believe that noxious plants are present upon a owner/occupier's land within the district, the supervisor shall, with permission of the owner/occupier or with a warrant, inspect the lands. If any noxious plants are found, the Noxious Plant Management Board shall send a written notice by certified mail to be served on the owner/occupier, directing him to comply with the immediate and long-term provisions of this act within a reasonable period of time specified in the notice.

(2) If the owner/occupier enters into and adheres to a contractual agreement with the county as part of the county's long-range noxious plant management program, he shall be in compliance with the provisions of this act.

16-1707 Enforcement. (1) If the notice served in 16-1706 is not observed within the time specified and/or the owner/occupier refuses to comply with the management agreement, the supervisor, upon procurement of a lawful warrant, shall institute management procedures upon the land described in the notice and submit to the county clerk an itemized account of services and expenses. The itemized account shall include the materials used, a legal description of the land involved, man hours of labor, and equipment employed. These costs shall be equivalent to the going rate paid for commercial management operations in the immediate vicinity. An additional penalty of twenty-five percent (25%) of the total cost for services and expenses incurred shall be included with the itemized account. Such expenses shall be paid by the county from the Noxious Plant Management Fund, and unless the owner/occupier's expense and penalty are repaid before October 15 next ensuing, the county clerk shall certify the amount thereof with the legal description of the land to be charged, and shall extend the same to the assessment list of the said county as a special tax on said land.

(2) Tax exempt lands (as defined in Title 84-202, R.C.M. 1947) shall, in accordance with the provisions of this act, be assessed a service fee equal to the management costs incurred and the additional twenty five percent (25%) penalty if the county performs the management operations as provided in 16-1707 (1). The service fee and penalty shall be applied to the Noxious Plant Management Fund. The fee shall be due on or before October 15 next ensuing.

(3) A fee due and unpaid under this act shall constitute a debt due the county. If the fee imposed by this act or any portion thereof is not paid at the time the same becomes delinquent, the county treasurer may issue a warrant in the name of the county directed to the clerk shall enter in the judgment docket in the column for judgment debtors, the name of the delinquent person mentioned in the warrant, and in the appropriate columns, the amount of fees, penalties, interest, and other costs for which the warrant is issued, and the date when such warrant is filed. The warrant so docketed shall have the force and effect of a judgment duly rendered by a district court and docketed in the office of the clerk thereof, and the county shall have the same remedies against the possessor user as any other judgment docket.

(4) It shall be the duty of the State Board of Land Commissioners in leasing any state land, to provide such lease that the lessee of lands so leased lying within the boundaries of any noxious plant management district shall assume and pay all assessments and taxes levied by the governing body of the county.

(5) Reseeding of right-of-way areas. Whenever the natural and cover on right-of-way areas is disturbed by construction of county roads, irrigation ditches, drain ditches, or otherwise, the governing body of the county shall require that the disturbed areas be seeded to an adaptable perennial grass or combination of perennial grasses and legumes. Every effort shall be made to establish a sod cover on the disturbed area.

(a) All seed used shall meet certified standards.

(b) Time and method of seeding, fertilizing practices, and grass species shall be those recommended by the Cooperative Extension Service.

16-1708 Administrative Procedures. (1) Complaints and Petitions. The Noxious Plant Management Board may act upon the petition of any interested person concerning the County Noxious Plant Management Program or any of its functions. On the filing of a petition concerning any matter within the jurisdiction of the Board, the Board shall promptly fix a date for an administrative hearing thereon and shall cause notice of the administrative hearing to be given. The administrative hearing shall be held without undue delay after the filing of the petition. The Noxious Plant Management Board shall enter its order and findings on complaints and petitions within thirty (30) days after the administrative hearing. In the case of any administrative hearing held by the Board, the person affected or the person testifying may be represented by legal counsel.

(2) Administrative appeals. Persons adversely affected by a decision or proposed decision by the Noxious Plant Management Board or supervisor may request an administrative hearing before the Board to show cause for the action or proposed action of the Board or supervisor. The application for an administrative hearing shall be acted upon within thirty (30) days after its filing, and if granted, the administrative hearing shall be held without undue delay. A person granted an administrative hearing may be represented by counsel. A person may appeal the decision of the Board following an administrative hearing to the governing body of the county.

(3) Judicial review. Any person adversely affected by the policies or orders of the Noxious Plant Management Board may obtain judicial review thereof by filing in the district court within thirty (30) days after entry of such

order, a petition praying that the policies or orders be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Board and thereupon the Board shall file in the court the record of the proceeding on which it based the policies and orders. The court shall have jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Noxious Plant Management Board with respect to question of fact shall be sustained if supported by substantial evidence when considered on the record as a whole. Upon application, the court may remand the matter to the Board to take further testimony if there are reasonable grounds for the failure to produce the evidence in the prior hearing. The Noxious Plant Management Board may modify its finding and its order by reason of the additional record and must file any modification of the findings or order with the clerk of the court.

16-1709 Noxious Plant Management Fund. (1) The governing body of the county shall create a Noxious Plant Management Fund either by appropriating money from the general fund of the county or levying a tax not exceeding five (5) mills on the dollar of total taxable valuation in the county.

(2) The Noxious Plant Management Fund shall be used solely for the management of noxious plants in the county. Any revenues generated by the sale of materials, rent of equipment, and assessed penalties shall revert to the Noxious Plant Management Fund of the county. The governing body of the county may create a Noxious Plant Management Revolving Fund for the management of Noxious Plants.

(3) The Noxious Plant Management Board may disburse funds as they feel are necessary to hire employees and to purchase materials or equipment for use in the Noxious Plant Management Program.

(4) The Noxious Plant Management Board may determine what materials or equipment owned by the county shall be made available for equal distribution or use by any person in the county provided that the materials are sold and equipment rented at a rate equivalent to local commercial rates and used solely for noxious plant management. Payments made for materials or equipment sold or rented shall revert to the Noxious Plant Management Fund for the county.

(5) The actual costs of conducting a noxious plant management program on the rights-of-way for state highways shall be assessed against the State Department of Highways and shall be paid from the state highway fund in compliance with an agreement between the county and the department. The county shall include all state highways in its noxious plant management program and shall submit a copy of that plan to the Department of Highways for review and approval of that portion of the plan affecting the department.

(6) The governing body of a county may accept any private, state, or federal grants to aid in the management of noxious plants within the county.

(7) The County Noxious Plant Management Board and the governing body of an included municipality shall cooperatively plan for the management of noxious plants within the boundaries of the municipality. The county shall implement management procedures described in the plan within the boundaries of the municipality for noxious plants only. Control of "nuisance weeds" will remain the responsibility of the governing body of the municipality. The noxious plant management supervisor shall enforce and carry out the provisions of this act equally within and without the boundaries of the municipality.

16-1710 Declaration of Noxious Plants. (1) The governing body of any county shall petition the Directors of the Cooperative Extension Service and the Agricultural Experiment Station for the addition or deletion of a weed plant to the county's noxious plant management list.

(2) The Directors of the Cooperative Extension Service and the Agricultural Experiment Station shall review and approve or disapprove the petition within twenty-one (21) days. If both directors agree, the governing body of the county may add or delete the plant or plants to or from the county's noxious plant management list.

(3) Two or more governing bodies may jointly petition the Directors of the Cooperative Extension Service and the Agricultural Experiment Station for the addition or deletion of a weed plant to the noxious plant management list of their counties.

16-1711 Cost Share. (1) The county may enter into financial or operational agreements to assist owner/occupiers in the county with a portion of the cost of managing noxious plants. If the county agrees to assist these owners/occupiers, then any assistance shall be equally available to all owners/occupiers in the county as set forth in the management plans of the county. Verified claims filed by owner/occupier cooperating with the county to collect a portion of the cost of managing noxious plants shall be paid by the county from the Noxious Plant Management Fund.

16-1712 Quarantine. (1) The Department of Agriculture shall adopt model rules and regulations which counties or Noxious Plant Management Boards may adopt and enforce for implementing a quarantine for farm products, machinery, and equipment containing noxious plants, plant parts, and seed to be transported within and into the county provided that the county rules and regulations meet minimum Department of Agriculture standards. Counties may adopt rules and regulations more stringent than those model rules and regulations of the Department of Agriculture.

16-1713 Violations and Penalties. (1) Any person who interferes with the Noxious Plant Management Board or its employees as public servants in carrying out the provisions of this act shall be guilty of a misdemeanor and upon conviction, shall be fined according to 94-7-302, R.C.M. 1947.

16-1714 Citizen Responsibilities. (1) Every person owning, controlling, occupying, or leasing any land in the state should, to the best of his ability:

(a) Learn to identify noxious plants.

(b) Survey his land and denote the presence or absence of noxious plants.

(c) Manage any noxious plants on his land with the goal of lasting reductions or elimination of those noxious plants.

(d) Enter into a long-term agreement with the county to manage any noxious plants on his land.

(e) Assist the noxious plant management supervisor as much as is practical in carrying out the provisions and intent of this act.

16-1715 Responsibilities of the Noxious Plant Management Board. (1) The Noxious Plant Management Board shall:

(a) Hire a competent noxious plant management supervisor.

(b) Adopt rules, regulations, and policies for the management of noxious plants.

(c) Hold regularly scheduled public meetings on the management of noxious plants within the county.

(d) Administer and disburse funds for management of noxious plants.

(e) Engage in other suitable activities to further noxious plant management.

(f) Be empowered to enter into any cooperative agreements that will promote the management of noxious plants.

(g) Keep operational records.

(h) Have the authority to purchase such materials and equipment necessary for performing a management program for noxious plants.

(i) Not interfere or compete with, so far as is practical, with any private enterprise within the county.

(j) Submit noxious plant management plans to the Cooperative Extension Service and the Departments of Agriculture, Highways, Fish and Game, and State Lands for review and comment.

(k) Delineate areas in the county where some management techniques may not be carried out because of unique environmental and economic considerations.

16-1716 Responsibilities of the Noxious Plant Management Supervisor. (1) The noxious plant management supervisor shall:

(a) Conduct periodic comprehensive surveys and analyses of all noxious plant populations within the confines of the district.

(b) Plan, develop, implement, and coordinate the long-term management programs on all federal, state, county, municipal, and privately owned lands within the district.

(c) Utilize resource people to aid in planning and developing management program.

(d) Submit specific reports on noxious plant management programs as required by the governing body of the county.

(e) Conduct or provide lectures, displays, meetings, and other educational activities for the general public and specifically for agricultural landowners or lessees on the management of noxious plants.

(f) Investigate all alternative methods of controlling noxious plants with the goal of achieving lasting reductions in noxious plant densities.

(g) Prepare an annual written report and evaluation of the noxious plant management program. The report shall be submitted to the governing body of the county, the Department of Agriculture, and the Cooperative Extension Service. The general public may also review the report.

(h) Manage and enforce the noxious plant management program.

(i) Consult and advise upon matters pertaining to the best and most practical methods of noxious plant management.

(j) Investigate or aid in the investigation and prosecution of any violation of the noxious plant management program.

(k) Cooperate with and assist supervisors of other counties.

16-1717 Role of State Agencies. (1) The Department of Agriculture and the Cooperative Extension Service in cooperation with counties shall:

(a) Denote the presence or absence of each noxious plant declared in this act in every county.

(b) Define the noxious plant infestations per county, watershed, or other appropriate geographical region of the state.

(c) Determine the number of acres infested with each noxious plant in each county of the state.

(d) Determine the economic and environmental impact of noxious plant infestations.

(e) Determine suitable methods for management of these noxious plants and disseminate this information to the counties.

(f) Assist in the development of watershed, district, regional, and state-wide noxious plant management program to include submission of plans to aid in the acquisition of state and federal funds for noxious plant management on state and federal lands.

(g) Delineate areas in the state where some management techniques may not be carried out because of unique environmental and economic considerations.

(h) Provide appropriate training sessions to supervisors to help them improve their expertise in management of noxious plant programs.

(i) Provide and distribute such information, materials, personnel, and funds that are available to aid in the management programs conducted by county personnel.

(j) Provide funds and personnel, if available, to manage an emergency infestation of any newly introduced noxious plant into the state.

RECEIVED

JAN 14 '76

MONT STATE DEPT
AGRICULTURE 6201

State of Montana

Office of The Attorney General

STATE CAPITOL
HELENA, MONTANA 59601

ROBERT L. WOODAHL
ATTORNEY GENERAL

June 9, 1976

Mr. George Lackman, Commissioner
Department of Agriculture
Airport Way Building West
1300 Cedar Street
Helena, MT 59601

Dear Mr. Lackman:

You have requested my assistance in determining whether the words "common nuisance" are necessary in the definition of noxious weeds contained in Section 16-1701, R.C.M. 1947, and Section 16-1702, R.C.M. 1947.

There is a legal significance to these words. By declaring noxious weeds a nuisance, the state may exercise its police power to exterminate such weeds.

The exact words "common nuisance" may be of less legal significance in Montana. The Montana statutes denote two types of nuisances: "public" and "private". Many state courts have stated specifically, that a "common nuisance" is a "public nuisance". The Montana Supreme Court has not specifically stated so. It has inferred such in Gibbs v. Gardner, 107 Mont. 76, 80 P.2d 370 (1938), wherein it held a nuisance is "common" or "public" when it affects rights enjoyed by citizens as part of the public, or to which every citizen is entitled.

The nuisance provisions of the Montana statutes refers only to "public nuisances" and "private nuisances" and provides remedies for each. "Common nuisances" are not mentioned. A "public nuisance" is defined as:

> "one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individual may be unequal." Section 57-102, R.C.M. 1947.

The remedies for a public nuisance are:

"1. Indictment or information;
2. A Civil action; or,
3. Abatement." Section 57-108, R.C.M. 1947

A public nuisance may be abated by:

"any public body or officer authorized thereto by law." Section 57-111, R.C.M. 1947.

The framers of Sections 16-1701 and 16-1702, R.C.M. 1947, appear to have wanted noxious weeds declared "public nuisances" as defined by Section 57-102, R.C.M. 1947, thereby permitting remedies against the nuisances pursuant to the provisions of Title 57, Chapter 1, R.C.M. 1947, although they did not use the precise terms of the statute.

To summarize, the words "common nuisance" do have a legal significance, although the words "public nuisance" are more definite in the total context of the Montana statutes, especially in reference to provisions for remedies affecting such nuisances.

Very truly yours,

ROBERT L. WOODAHL
Attorney General

RLW:ac

State of Montana

Office of The Attorney General

STATE CAPITOL
HELENA, MONTANA 59601

ROBERT L. WOODAHL
ATTORNEY GENERAL

JUL 9 '76
MONT STATE DEPT
AGRICULTURE 6201

Mr. George Lackman, Commissioner
Department of Agriculture
1300 Block Cedar Street
Airport Way Building West
Helena, Montana 59601

Dear Commissioner Lackman:

I have your recent letter requesting information on the validity of your model pest control release agreements and questioning what action to take to minimize liability if the release is invalid.

This matter has been discussed with J. Michael Young, Administrator of the Insurance and Legal Division of the Department of Administration. He is in agreement that under Article II, Section 18 of the 1972 constitution and Title 82, Chapter 43, R.C.M. 1947 (Montana Comprehensive State Insurance Plan and Tort Claims Act) a release such as appended to your letter is invalid and unenforceable.

I would suggest you contact Mike Young to determine the best means of minimizing liability in connection with pest control procedures. Mike administers the division charged with managing the state insurance plan and tort claims submitted to the state. He is in the best position to determine what limits can be placed on liability for pest control procedures and how best to limit this liability under the state insurance plan and tort claims act.

Very truly yours,

ROBERT L. WOODAHL
Attorney General

RLW:ch

Rec'd 11/5/76

State of Montana

Office of The Attorney General

STATE CAPITOL
HELENA, MONTANA 59601

ROBERT L. WOODAHL
ATTORNEY GENERAL

VOLUME NO. 36 OPINION NO. 103

WEED CONTROL - DISTRICTS - Power to enter private and government owned lands - WEED CONTROL - DISTRICTS - Power to require governmental agencies to control noxious weeds on government owned lands - WEED CONTROL - Power to enter government owned land to control weeds and assess government agencies for work performed - WEED CONTROL - DISTRICTS - Power to control nuisance weeds not classified as noxious - WEED CONTROL - DISTRICTS - Power to establish fund to control non-noxious nuisance weeds - WEED CONTROL - DISTRICTS - May not operate outside county boundaries; Sections 16-1701, 16-1706, 16-1709.1, 16-1714, 16-1715, 16-1717, 16-1719, Revised Codes of Montana 1947.

HELD: 1. A county weed control district must serve a written notice pursuant to §16-1714, R.C.M. 1947, prior to entering land within the county for weed control purposes and comply with §16-1715, R.C.M. 1947, prior to actual entry, unless it is in receipt of a prior written permission from the person owning, occupying, or controlling the land to enter said land.

2. A county weed control district may enter state and local lands or highway lands to control noxious weeds, but not federal lands without permission of the federal government unless there is a private lessee on the land. It may not assess a local, state, or federal government agency for weed control work unless the agency voluntarily offers to pay for the work performed.

3. A county weed control district may not expend noxious weed fund monies to control weeds not classified as noxious pursuant to §16-1701, R.C.M. 1947.

4. A county weed control district may not establish a fund to use for the direct control of nuisance weeds, not classified as noxious.

5. A county weed control district may not directly control weeds outside the boundary of the county.

October 7, 1976

Mr. George Lackman, Commissioner
Department of Agriculture
1300 Block, Cedar Street
Airport Way Building West
Helena, MT 59601

Dear Commissioner Lackman:

You have requested my opinion concerning the Montana Weed Control Law, Title 16, Chapter 17, R.C.M. 1947.

More specifically you ask:

1. Whether a county weed control district may legally perform noxious weed control on private, state, or federal land without serving a written notice or obtaining permission from the person owning, leasing, or administering the land?

2. May a county weed control district require local, state, or federal agencies to control noxious weeds on their respective lands within the district?

a. May a district enter local, state, or federal lands to perform control of noxious weeds and assess the local, state, or federal agencies for control work performed?

b. If a district cannot assess state or federal entities for weed control work performed, can weed control districts enter such lands to perform control work and accept responsibility for all expenses of the operation?

3. May weed control districts directly control, through expenditure of noxious weed funds, "weeds" which are not classified as noxious by the Weed Control Law or designated by the county commissioners with the approval of the county extension agent or the agriculture experiment station at Montana State University?

4. May counties establish, in addition to the noxious plant management fund, another fund to control nuisance weeds not defined as noxious?

5. Is it legal for a weed control district to directly control noxious weeds on lands outside the boundary of the county?

6. If the present weed law is revised to include a definition of the word "person", would the definition set forth below include local, state, and federal agencies?

"'Person' means any natural person, individual, firm, partnership, association, or body politic or any organized group of persons, whether incorporated or not, and includes any trustee, receiver, assignee, or similar representative thereof."

You ask whether a county weed control district may perform noxious weed control procedures without serving a notice on the person owning, occupying, or controlling lands within the district.

Section 16-1714, R.C.M. 1947, requires a county weed control district to inspect land within the district if a complaint is received that noxious weeds are present on the land. If an inspection finds such weeds a written notice must be served on the person allowing the weeds to be present, directing him to comply with the Weed Control Law within a specific period of time. If the notice is not obeyed within the time specified the supervisors of the district shall institute control measures. §16-1715, R.C.M. 1947.

Unless the county weed control district has received permission to enter the land to perform weed control procedures from the person owning, occupying or controlling the land, a notice under §16-1714, R.C.M. 1947, must be presented to that person and non-conformance within the specified time, must precede any entry onto the land for the performance of weed control measures. In the alternative, obtaining the written permission of the person owning, occupying, or controlling the land prior to entry for weed control purposes would suffice for a legal entry to the land.

Your next general question deals with the authority of county weed control districts on land owned by local, state, or federal agencies within the district. Any discussion of authority over government owned lands must be divided into two categories: (1) authority on state and local government lands; (2) authority on federal government owned lands.

Section 16-1706, R.C.M. 1947 provides it is unlawful to willfully permit noxious weeds to go to seed. This provision specifically applies to state lands and all county, state, and federal owned and controlled highways. It is a rule of statutory construction that acts must be read and considered in their entirety and the legislative intent may not be gained from the wording of any particular section or sentence, but only from a consideration of the whole. State ex rel. Jones v. Giles, ____ Mont. ____, 541 P.2d 355 (1975); Home Building & Loan Ass'n of Helena v. Bammel, 106 Mont. 407, 81 P.2d 673 (1938). Following the rules stated above the inclusion of state lands and the county, state and federal highways in §16-1706, R.C.M. 1947, would include these lands under the coverage of all of Title 16, Chapter 17, R.C.M. 1947. As all counties and other local form of government are subdivisions or agencies of the state, Roosevelt County v. State Board of Equalization, 118 Mont. 31, 162 P.2d 887 (1945); Dietrich v. City of Deer Lodge, 124 Mont. 8, 218 P.2d 708 (1950), the inclusion of "state lands" would also include lands of local governmental entities. These subdivisions of the state are permitted by statute to own land pursuant to §§16-804 and 11-104, R.C.M. 1947. Therefore, county weed control districts may enter state and local government lands in compliance with the entry requirements of the Weed Control Law.

Federal government owned lands, with the exception of federal highways, are not included in the coverage of the Montana Weed Control Law. County weed control districts may only enter such lands for weed control purposes after first obtaining permission from the proper federal agency owning, occupying, or controlling said land within the boundaries of the county.

The federal government has exclusive jurisdiction over these lands, unless it has ceded concurrent jurisdiction to the state government. Valley County v. Thomas, 109 Mont. 345, 97 P.2d 345 (1940); Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation v. Calvert Exploration Co., 223 F. Supp. 909 (D. Mont. 1963). Such prohibition does not extend to lessees

of the land from the federal government, if the lease provides for such an exception.

If a weed control district enters state land pursuant to the provisions of the Weed Control Law or federal land by specific grant of permission to enter for weed control purposes, the government entity owning, occupying, or controlling the land may not be assessed for work done. Unless Congress consents thereto, all property belonging to the federal government, devoted to public uses, is immune from state taxation. First National Bank of White Sulphur Springs v. Bergan, 119 Mont. 1, 169 P.2d 233 (1946). Ever since McCulloch v. Maryland, 4 Wheat. 316, 436, 4 L.Ed. 579 (1819), a state, or subdivision thereof, may not tax the federal government or an instrument, means or agency thereof, without the consent of Congress, if such tax would interfere with the governmental functions.

Section 84-202, R.C.M. 1947, specifically exempts property of the federal, state, county, etc. governments from taxation. Section 16-1715, R.C.M. 1947 provides that assessments for weed control procedures shall be considered as personal property subject to property taxation; such assessments may not be made against the governmental agency. There is one exception to this rule as §16-1719, R.C.M. 1947 specifically provides that the state highway fund shall be used to pay for the cost of controlling noxious weeds along the right of way of state or federal highways.

If state owned agricultural land is leased to a private individual, §16-1715, R.C.M. 1947 states that the lease shall provide that the lessee shall be liable for weed extermination and shall be assessable, as a personal tax, for any weed control procedures undertaken pursuant to the Weed Control Law.

Section 16-1719, R.C.M. 1947 provides that the weed district supervisors shall control all noxious weeds within the confines of the district with the cost of such control paid from the "noxious weed fund". Section 16-1715, R.C.M. 1947 provides the taxes assessed pursuant to that section shall go into said fund, along with monies either appropriated from the general fund or a special levy on all taxable property in the county. §16-1717, R.C.M. 1947. Therefore, reading the plain language of these portions of the Weed Control Law together, the county may perform work on local, state or federal lands - after receiving the proper permission or compliance with entry requirements - and pay for such work out of the noxious weed fund. Of course, the local, state, or federal government may offer to pay for such weed control work on a voluntary basis upon the approval of Congress, the Legislature or the proper local governing body.

You ask whether weed control districts may expend monies from the "noxious weed fund" to directly control weeds not classified as noxious by the Weed Control Law or designated as noxious

by the county commissioners pursuant to §16-1701, R.C.M. 1947.

Section 16-1717, R.C.M. 1947 specifically states proceeds going into the "noxious weed fund" shall be used "solely for the promoting of control of noxious weeds or extermination of weed seed" in the county. The section goes on to say the fund may be expended by the county commissioners in "such manner, as is by said supervisors deemed best to secure the control and extermination of noxious weed and weed seed". The plain language of the statute states only weeds classified as noxious may be controlled using funds from the "noxious weed fund".

You ask whether a county may establish a fund other than the noxious weed fund, to control nuisance weeds not defined as noxious. The noxious weed fund is specifically set up in §16-1717, R.C.M. 1947, but no mention is made of a fund to control nuisance weeds, not classified as noxious. In fact, no mention is made of such other weeds. It is a rule of statutory construction that express mention of one matter in a statute excludes other similar matters under the maxim "expressio unius est exclusio alterius". Helena Valley Irrigation District v. State Highway Commission, 150 Mont. 192, 433 P.2d 791 (1967). Therefore, the specific mention of the noxious weed fund, with the absence of mention of other weed control funds, indicates the intent of the legislature that no such funds would be established.

You ask whether it is legal for a weed control district to directly control noxious weed outside the boundaries of the county. Section 16-1709.1, R.C.M. 1947, specifically limits the jurisdiction of a county weed control district to "all land within the boundaries of the county."

You ask whether the proposed statutory definition of "person" set forth in question #6, supra, would include local, state, and federal agencies. As stated above in this opinion, the inclusion of these governmental agencies in such a definition would have no effect on the powers that a weed control district might have over lands owned, occupied, or controlled by these agencies. Furthermore, there are inconsistencies, redundancies, ambiguities, and omissions in the proposed definition which would make it inadvisable for presentation to the legislature in its present form.

THEREFORE, IT IS MY OPINION THAT:

1. A county weed control district must serve a written notice pursuant to §16-1714, R.C.M. 1947, prior to entering land within the county for weed control purposes and comply with §16-1715, R.C.M. 1947, prior to actual entry, unless it is in receipt of a prior written permission from the person owning, occupying, or controlling the land to enter said land.

2. A county weed control district may enter state and local lands or highway lands to control noxious weeds, but not federal lands without permission of the federal government unless there is a private lessee on the land. It may not assess a local, state, or federal government agency for weed control work unless the agency voluntarily offers to pay for the work performed.

3. A county weed control district may not expend noxious weed fund monies to control weeds not classified as noxious pursuant to §16-1701, R.C.M. 1947.

4. A county weed control district may not establish a fund to use for the direct control of nuisance weeds, not classified as noxious.

5. A county weed control district may ~~not directly~~ control weeds outside the boundary ~~of the~~ county.

Very truly yours,

ROBERT L. WOODAHL
Attorney General

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State of Montana
Office of The Attorney General
STATE CAPITOL
HELENA, MONTANA 59601

ROBERT L. WOODAHL
ATTORNEY GENERAL

Dec 3 '76
MONT STATE DEPT
OF AGRICULTURE 6201

November 22, 1976

Mr. George Lackman, Commissioner
Department of Agriculture
1300 Block Cedar Street
Airport Way Building West
Helena, MT 59601

Dear Mr. Lackman:

You have requested my assistance in determining the applicability of certain Opinions of the Attorney General, issued in the 1940's and 1950's, to the Montana Weed Act, chapter 17, title 16, R.C.M. 1947.

The applicability or non-applicability of each of these enumerated opinions to the present Montana laws would not render these opinions void or invalid. If you wish an opinion regarding any of the areas covered by these early opinions, a formal opinion request should be made to this office setting forth the specific facts and questions to be considered.

1. Number 200, Opinions of the Attorney General, Volume 18; issued March 27, 1940: This Opinion defines "agricultural land" and concerns a 1939 law permitting payment for weed control if general fund monies are inadequate. Section 16-1719, R.C.M. 1947, provides that the total cost of weed control must come from the noxious weed fund. The present law appears to render this Opinion inapplicable to finances under the present weed law.

2. Number 243, Opinions of the Attorney General, Volume 18; issued July 11, 1940: This Opinion states the cost of removal of noxious weeds from state highways must be paid from the noxious weed fund. Section 16-1719, R.C.M. 1947, provides the control of weeds along state or federal highways shall be paid from the state highway fund. The present law appears to render this Opinion inapplicable to the removal of weeds along highways.

3. Number 258, Opinions of the Attorney General, Volume 18; issued September 13, 1940: This Opinion holds that equipment purchased with weed control funds cannot be used outside the district and that general fund monies may be used to pay for weed control on county lands and highways. The first portion of this Opinion might remain applicable to the present weed law as §16-1718, R.C.M. 1947, permits the

purchase of equipment for weed control purposes, but the Opinion only refers to users outside a district which is less than the whole county and §16-1709.1, R.C.M. 1947, now provides that the weed control districts include all lands within the boundaries of the county, so this Opinion may not be applicable due to a change in the law. The second portion of the Opinion appears inapplicable to the present law for the reasons stated in the comment on Opinion Number 243 above.

4. Number 5, Opinions of the Attorney General, Volume 20; issued December 15, 1942: This Opinion holds that the weed control district may file a claim for work done by the district on state-owned lands. The statutes referred to as the basis for this Opinion are no longer on the books. Sections 16-1715 and 16-1719, R.C.M. 1947, provide for collection of weed destruction costs on a different basis than that referred to in the Opinion. (See also Number 103, Opinions of the Attorney General, Volume 36, issued October 7, 1976). This Opinion would appear inapplicable to the present weed law.

5. Number 209, Opinions of the Attorney General, Volume 20; issued May 11, 1944: This Opinion holds that a town or city does not have authority to appoint its own supervisor and provide funds for weed control. The statutory authority for cities and towns to form weed control districts, §16-1712, R.C.M. 1947, was repealed by Section 3, chapter 185, Laws 1969. The Opinion appears to remain applicable to the present weed law as cities and towns do not have any apparent authority to form weed districts separate from the county district.

6. Number 254, Opinions of the Attorney General, Volume 20; issued October 7, 1944: This control district must be indentified and requires approval of 51% of the landowners in the district prior to forming a district. Section 16-1709.1, R.C.M. 1947, provides that each county shall have a weed control district comprised of the entire county, no provision is made for a voice from the landowners as to formation of the district. The Opinion appears inapplicable to the present weed law as all laws serving as a basis for the Opinion have been repealed.

7. Number 140, Opinions of the Attorney General, Volume 21; issued March 26, 1946: This Opinion deals with formation of a weed district by petition. The laws serving as a basis for this Opinion have been repealed, therefore this Opinion appears to be inapplicable to the present weed law.

8. Number 172, Opinions of the Attorney General, Volume 21; issued June 21, 1946: This Opinion holds farmers outside a weed district may not receive services from the district. The laws which serve as a basis for this Opinion have been repealed and the Opinion appears inapplicable to the present weed law, but the Opinion might remain applicable in the case of a farmer outside the county requesting services in a very hypothetical situation.

9. Number 187, Opinions of the Attorney General, Volume 21; issued August 5, 1946: This Opinion holds a county may create a noxious weed fund either by appropriation from the general fund or a 2 mil property tax. Section 16-1717, R.C.M. 1947, reads the same as the law serving as the basis for this Opinion, therefore this Opinion appears applicable to the present weed law.

10. Number 47, Opinions of the Attorney General, Volume 22; issued July 14, 1947: This Opinion deals with the percentage of landowners necessary to approve the formation of a weed district and the status of Indian Reservation lands. The laws serving as a basis for the district formation procedure portion of the Opinion have been repealed, therefore that portion of the Opinion appears inapplicable to the present weed law. As you know the status of reservation lands vis-a-vis the state government is in a state of flux, but the taxation of Indian lands portion of this Opinion appears to remain applicable under the present law and court decisions.

11. Number 78, Opinions of the Attorney General, Volume 22; issued November 12, 1947: This Opinion holds a city cannot contract to pay weed control costs, the county must pay all costs out of the noxious weed fund. The laws providing for a city district have been repealed, but the present law (especially §16-1719, R.C.M. 1947) may leave the general conclusion of the Opinion applicable to the present weed law. This general area was covered in Number 103, Opinions of the Attorney General, Volume 36, issued October 7, 1976.

12. Number 100, Opinions of the Attorney General, Volume 23; issued March 21, 1950: This Opinion deals with tort liability of weed control district. The abolition of sovereign immunity by Article II, Section 18, 1972 Constitution, and the Tort Claims Act, §§83-701 through 83-707, R.C.M. 1947, may make this Opinion inapplicable to the present law, but an official opinion of this office would be necessary before determining the exact present status of the tort liability of weed districts.

13. Number 61, Opinions of the Attorney General, Volume 24; issued February 2, 1952: This Opinion deals with the authority to dissolve weed control districts. The statutory provision relating to the dissolution of weed districts

(§16-1723, R.C.M. 1947) was repealed in 1969 (Section 3, Chapter 185, Laws 1969). The authority of county commissioners to dissolve weed control districts, if any there be, must be answered by an official opinion of this office or a court decision on the question.

14. Number 109, Opinions of the Attorney General, Volume 24; issued August 14, 1952: This Opinion deals with the charges for weed control and the assessment and collection of taxes as provided by statute. The law remains basically unchanged since the issuing of this Opinion, therefore the Opinion appears to remain applicable to the present weed law.

Very truly yours,

ROBERT L. WOODAHL
Attorney General

RLW:sp

Appendix VIII

WEED SPECIALIST DUTIES

Duties and Responsibilities

This position will require active involvement with a number of duties and responsibilities. This position will require the performance of duties not presently handled by any state agency and will further consolidate and expend those areas of responsibility now assumed by other state employees. The major duties include:

1. Development of a state management plan for noxious plants. This plan would serve as a model for county government. The primary purpose of this plan would be to illustrate to Congress that the State of Montana has a noxious plant management program. Thus, the state may be able to obtain "Carlson-Foley" funds for controlling noxious plants on federal lands. These funds by law can be appropriated only to state departments of agriculture. The department will serve as the holding company for these funds which, upon correct and proper county application, will be distributed to counties.

2. Mapping populations of noxious plants throughout the state.

3. Serve as a coordinator between cooperating counties and federal-state interactions.

4. Assist the Extension Service in conducting training programs.

5. Assist counties in noxious plant management upon request.

6. Provide expert technical assistance to county weed districts.

7. Maintain and update a list of registered herbicides and what crops they may be used with.

8. Maintain surveillance for introduction of new noxious plants into the state.

The monies needed to support this position and its functions requires $22,000 per fiscal year.

Appendix IX

SUMMER FIELD AIDES

Proper implementation of a Management Plan requires an accurate and complete definition of the problem. To date, the noxious plant problem in the state is poorly defined and it does not appear that the problem will be defined more accurately in the near future. A central agency is needed to conduct a thorough mapping program for the entire state. This mapping program would identify land areas, density, and geographic location of a number of plant species that are considered noxious. Accomplishment of this goal would require a five (5) member survey team of temporary summer field aides, probably students majoring in Botany or Weed Science. This project could possibly be accomplished in two (2) field seasons. This information collected will be catalogued and accurate maps of the noxious plant infestations drawn for each county. These maps will be made available to all county weed districts. If aerial infrared photography proves to be a useful tool, then the information provided through use of this technique will also be made available.

This project will require $25,000 per fiscal year.